Examen Legum Angliæ:

OR, THE

LAWS

OF

ENGLAND

EXAMINED,

By Scripture, Antiquity, and Reason.

Cujus Author Anagrammatῶs eſt,

Ἀ νόμος βοᾷ ὡς βαρύ.

MALACHI 4.4.

Remember ye the Law of Moſes *my Servant, which I commanded unto him in* Horeb, *for all* Iſrael, *with the Statutes and Judgements.*

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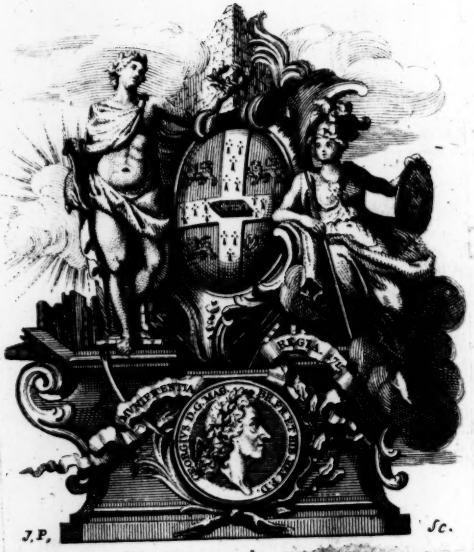

1606:10

To the Reader.

READER,

I Expect upon the very first view of the Title Page of this Treatise, to be Censured by three sorts of men: The first are, some superstitious Antiquaries of this Age, who are better skilled in *Geoffrey* of *Monmouth*, and other idle Stories of the *British* Kings (before the Romans entred *Britain*) and in the Grants and Laws of the *Saxon* and *Danish* Kings of *England*, made for exalting the Pope's Power, Erection of Monasteries, and

other Superſtitions, (and reverence them more) then the holy Scriptures: And as they believe the Name of a King to be *Jure Divino*, and indeed little leſs then a God; and that no man may Rule, who hath not that Title, becauſe that *a* Name muſt never dye: ſo they think, That the Laws which they and others call the *b* Kings Laws, are (as the Town-Clerk told the *Epheſians* *c* concerning their Idol *Diana*) *the Image which fell down from* Jupiter, and of ſo *d* ſacred and divine Authority, that they can admit of no alteration, without breach of the divine Law. To theſe I'll ſay onely thus; Government, and ſo are Laws, the *e* Ordinances of God: but what kinde of Government, or how the Supreme Magiſtrate ſhould be called, or why Humane Laws may not be altered or amended, I finde nothing in Scripture *f*. Government, in reference to the kinde, is called by the Apoſtle PETER,

a *Plow. Com.* fo. 177. b. & 129. b. *Bodin. Repub.* l. 1. p. 112.

b *Coke* tit. *Cawdreys* caſe, l. 5. par. 1. fo. 1.

c Acts 19. 35.

d *Lex illa Sanctio ſpecialiter dicitur.* Cowel Inſtit. Jur. Angl. l. 2. Tit. 1. ſect. 10. Impr. Anno 1630.

e Rom. 13. 1, 2.

f Ariſtotle *in his ſecond & fourth Books of Politicks, proves this at large; where he ſhews the kindes of Government, and Titles of the Governors in his time.*

gar-

g ἀνθρωπίνη κτίσις, A Humane Creature: and whether the Government be Monarchical, Aristocratical, or Democratical; or whether the supreme Magistrate be called *Nasi*, Prince, as the Jews called *Moses*; or Leader, *h* Governour, or *i* Protector, Ἄρχων or Βασιλεὺς, that is, King, as the Greeks called their Chief Justice at *Athens*; Dictator or *k* Imperator, as the *Romans* called their Chief Magistrate; or as the *Venetians* call theirs *Doge* or *Duke*, there is nothing in *Gods* Word against it. But this is necessary, that the Supreme Magistrate should have *l* δύναμιν and ἐξουσίαν, Power and Authority, which are to be upheld by good and wholesome laws, founded upon the Divine laws of God, the onely law-giver, who can save and destroy; and secured and defended with the Power, Estates, and strength of the People, who are to look upon the Authority which God hath set over them, and *m* submit themselves thereunto for the *Lord*'s sake; and not to dispute about Change of Government, which

g 1 Pet. 2. 13

h *See the several Titles given to the Supreme Magistrate of several Nations anciently and lately*, p. 121. n. 18. sequ.

i *Bodin. Repub.* l. 1. p. 83. Hen. 2. *King of* France *called* Protector, 1552. Adherbal *King of* Numidia, *termed himself, The Steward of the People*, p. 121.

k *Chief Captain*, p. 157.

l *Pasor Lex.* p. 206. b. *Bodin. Repub.* l. 1. p. 110. *Confer. concerning Power of Parliaments*, p. 4, 5, 6.

m Ezra 7. 25, 26. Rom. 13. 1, 6, 7.

n Exod. 18. 13,21. Numb. 11. 16,17. Deut. 1. 13, 14,15. Acts 13. 20,21,22.

which ſometimes is both *n* lawful and neceſſary.

o Haynes *view Holy Scriptures*, p. 81. *Ral. Hiſtor.* l. 1. c. 9. ſect. 1,2.

It ſeems clear, That all Government was Originally in Families, where the Maſter or Father of the Family was the Prince or Chief Magiſtrate; *o* the Obedience to whom was called *Piety*: But afterwards, when the World grew better ſtored with People, men began to aſſociate themſelves into Villages, then into Cities, and laſtly into Commonwealths, and Nations; and theſe betook themſelves to *p* a Governour, whom at firſt they called *q Elder*; which was not onely a name of age and gravity, but alſo of ſuperiority, and Magiſtracy, and continued untill *Monarchical Government* was Erected, which it ſeems at firſt was a *Government* at *r* the Will of him that ruled, and grew into Tyranny for want of Laws.

p Paræus in Gen. c. 10. Hawk. *Right of Dominion*, l. 2. c. 4. p. 35 *Ariſt. Polit.* l. 1.

q Gen. 50. 7. Exo. 3. 18 & 24. 14. Pro. 31. 23.

r Bodin. Repub. lib. 3. cap. 3. pag. 293. l. 4. c. 1. p. 412. *Jun. Brut. Vind. contra Tyran.* p. 95. *Ex Herod.* l. 2.

ſ Exo. 3. 10, 16, 18. & 18. 13. *Willet Hex. in Exo.* 18. *v.* 15, 19. qu. 16, 18.

ſ But it pleaſed *God* in favour to mankind, and for the good of his people, to eſtabliſh ſupreme power in one perſon, limited and bounded with wholeſome Laws: And as

an

an affliction and Punishment to suffer Tyranny to be exercised in the *t* world, and sometimes towards his own people, as may be seen in the government of the Babylonians, Assyrians, Medes, Persians, and other heathen nations.

t *Bod. de Rep.* l.1.p.47. & l.2.p.200. *out of* Philo Judæus *and* Josephus.

u The chief Patern which can be expected, and of most certain Antiquity, both for government and laws, is that of the Israelites; (with whom *God* was most eminently present) Albeit, there were many other Kings, long before *Moses* brought the Israelites out of *Egypt*, as those mentioned in the Book of *Genesis*; besides the Kings of *Egypt*, *Babylon* and *Assyria*, of which *w Nimrod* was the first: of these it's not necessary to say any thing.

u *Grot. Pol. Max. Par.* 2. *c.*8. *Gen.*14.1. & 40.1.

w *Ral. Hist.* l.1.c.10.sec. 1. *Haynes View Holy Scripture*, p. 125. *Hawk. Right of dominion*, l.2.c.7.p.45 *Ex Chrysost. & Muscul.*

But concerning the Israelites, their state, laws, and government, we have most exactly recorded by *Moses x* (the best and most ancient Writer of Laws) in the Book of *Exodus*, which contains *y* their deliverance out of *Egypt*, with the concomitants and circumstances thereof, in the first part of that Book, to the end of the seventeenth Chapter: Then their constitution and settlement

x *Coke* l. 7. fo.12. *Calvins case.*

y *Willet Hex. in Exod.* p.1, 2.

ment in the Land of *Canaan* by wholesome and just laws, z which were delivered unto them from *God* by the hand of *Moses*.

z Exo. 21. 1

Now to return, after this digression: If Almighty *God* gave Political laws to his own people, no man dare say, but that those laws must needs be most just and equal, a and most profitable for the people. And upon this ground it's to be maintained, That b all laws, by whomsoever instituted, repugnant to those holy laws of Almighty *God*, are to be rejected, (although they bear the Image of reverend Antiquity) because they have not the stamp of the chief *Law-giver* upon them.

a *Cock Engl. Law*, p. 4.

b *Lex vera, Lex bona est & aterna, & mutationis prorsus nescia immo & eadem ubique si modò vera: nam que ingeniorum afflatu subinde locis temporibsq; interpolatu distinguitur & Protei modo formam evariat, neutique Lex dicenda est: Veteres legum latores earum inventiones esse divini muneris Arbitrati*, Cœl. Rhod. Lect. Antiq. l. 18. c. 19. p. 697.

The second sort of men, from whom I expect a Censorious Vote, are the greatest number of Officers, Clerks, and Practisers of the *Law*, (who indeed by their superstructures, alterations, innovations, additions, and other devices, have subverted the practice of the *Law*, and set another face upon it:) These will

will tell me, That by this Craft we have our wealth, as *Demetrius* told his fellows, when DIANA, as he thought, was in danger. They are come into the rooms and places of the Popish Clergie, as they were called, who anciently were the Clerks and Officers in the Courts at *Westminster* c: And in such sacred Orders, that the chief of them, the six Clerks in Chancery, had no liberty to marry, until they had license by the Statute of 14 *Hen.* 8. *cap.* 8. And these are sworn, and resolved to all their old courses, tending to their profit: And therefore, if they consult about this matter, they will conclude, That many things may be amended; as they found at their last Meeting in *Staple*-Inne-hall: but heed must be taken, that nothing be excepted against, which tends to the Practisers or Clerks profit. And I shall very likely hear them say of me, as I heard some of them speak of one of the most considerable of the late Reformers of the Law; that he was like the Fox in the Fable, which would have all other Foxes Tails cut off, because he had none of his own. But to such of these as are resolved still to make silver-shrines for

c *These Clerks used to make all Conveyances, and wrote the Legice-books.* 14 *H.* 8. 8.

DIANA, and to prefer these our laws, before the Laws of God; I'll say no more but this: *d He that is unjust, let him be unjust*; and, *He that is filthy, let him be filthy.*

d Rev. 22. 11.

To the rest of them, of whom I have more hope, that they have something of the knowledge of *God* and *Religion*, I shall onely commend that Motto, which I once saw set up in a Lawyers Study, *Non quid, sed Quomodo:* If this were well considered, that a little well gotten, with the Blessing of God upon it, would be better then great treasures of Iniquity; and that the good of the Nation, is to be preferred before private profit: This, I say, would make men willing to have a happy reformation; which cannot be had, until we be fit for it.

Most menare like Tiberius *the Roman Emperor, who said, that his time was no time for Reformation.* Tac. Annal. l. 2. c. 8. p. 43

For that which may be cast upon my self, I do aver, That I have had my share of advantage by the laws, equal to most of my condition in the Countrey where I live: But I do profess that now, after almost thirty years practice, I finde the laws in divers particulars of Common Right, and Punishment of some Offences, more uncertain, unequal, per-

perplexed, and repugnant to the Laws of God, and burthensome to the people, then any Laws either of Heathens or Christians, that ever I read or heard of; and these make these Laws cry out for Amendment.

The third sort whose Censure I must look to undergo, are the great Props and Supporters of this Law, who will tell the world, with Sir *Edward Coke*, That no one yet ever censured or controlled *Littleton* (the Common Law) but he that understood him not.

To this I answer, That I do not censure *Littleton*, more then Gods Word censures him: *There is one that accuseth* (him and) *you, even* d*Moses*, for that ye are departed from the Law of God, and have followed *Littleton*, and other Papists and heathenish Politicians. The holy Ghost sends us *to the* e*Law and to the Testimonie*; and Christ sends us to f *Moses and the Prophets*: If *Littleton*, or any other Oracle, speak not according to these, whether their Laws concern faith or manners, *it is because there is no light in them*. But I have much hope of many of the Judges

d *Joh.* 5.45.

e *Isa.* 8.20.

f *Luk.* 16.29

and great men of the land, that they will lay their hands to the Work of Reformation, to the honour of God (who hath honoured them) and for the good and benefit of the people; forasmuch as they cannot but be very sensible of the great evils which attend the Laws, as now they stand, being repugnant to the Laws of God, as many Judges g have hinted upon the Bench in several Cases. And this is all I shall say in answer to mine accusers.

g *Sir* George Crook, *Serjeant* Parker, *Justice* Ask, *about Manslaughter, at* W. *and* Co. *Sir* George Crook *about Witchcraft exercised, where death followed not, at* Cov.

One thing more I do affirm, That, to my knowledge, I have not in this Treatise willingly charged any thing as a fault upon the Law, either in the excess or defect, in the Theory or Practise, but what I have found therein, and proved the same to be repugnant to the Rules and Consequences of the holy Scriptures, contained in the Old and New Testament: And for such things as are any whit questionable, whether the law be so or no, I have usually there quoted the Authorities of the law for proof thereof, and

put down the Scriptures as their Oppoſites, for their correction, and in confirmation of mine own Aſſertions: But where (in matters of daily practiſe, every Clerk or Attorney can be my witneſs) I have alledged any thing, (as about ſuing to the Exigent, Tryal of Priſoners, Returns of Writs, and the like) and have not cited any Books or Rolls for proof thereof, I did it purpoſely, becauſe I held it needleſs, being conſtantly and commonly done every *Term.*

Now to draw to an end, leſt the Gate ſhould prove too big for the Building, I do profeſs, that I am not ſo confidently ignorant, as to imagine, that all that I have herein written, ought to paſs for currant without controll (having to deal upon ſuch an uncertain ſubject as the law, wherein Sir *Edward Coke* himſelf is cenſured for groſs Miſtakes) but rather, that through ignorance and other infirmities, I may erre and wander in many things, having gone an untrodden way, without a Guide, or any one to go before me; there being not one Book, to my knowledge, extant of this kinde. If what I have done, ſhall but prevail ſo far, as to

ſtir

stir up any more wise and learned to take this matter in hand, and shew us a more excellent way, I have my reward. And I do professe with him that wrote the History of the
h 2 *Mac.* 15. 39. h *Jews* in the vacancy of the Prophets, during the Government of *Judas Macchabeus*, and his Fellows, that if I have done well, and as the matter requireth, it is that I desired; but if I have spoken slenderly and barely, it is that I could.

Farewell.

The

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Examen

Examen Legum Angliæ:

OR,

The Laws of *England* Examined by *Scripture, Antiquity* and *Reason.*

CHAP. I.

Of the ſuppoſed Excellency and Antiquity of the Common Laws of England; *and what is to be thought thereof in general.*

IT may well be accounted a matter of Admiration to the Vulgar and more Unlearned of the People of this Nation; and the wiſer ſort may well ſtagger in their Judgements, to conſider what high *Encomiums*, or rather Hyperbolical Elogies, are given to the Laws of the Land, generally by all the Practicers and Profeſſors thereof: And yet what abundance of Pains and Labour hath been taken, in order to the Amendment and Reformation of the ſame, without any conſiderable benefit or ſatisfaction to the People.

(a) Coke *Preface to the* 8th *Report.*

(b) *Note this Gradual Hyperbole.*

(a) It is Hyperbolically, yet confidently, affirmed by one of the Chief Champions of the Law, (whose *Reports* go for Law generally without control) That there is no Humane Law within the Circuit of the whole World, (b) by Infinite Degrees, so apt and profitable, for the honourable, peaceable, and prosperous Government of this Nation, as the Common Lawes; which he endeavors to prove to be most just and ancient; and saith, That the same is contained in the old Statutes, *Magna Charta, Charta Forestæ, Merton, Marlebridge, Westminster, De Bigamis, Glocester, Westminster* 2, *Articuli super Chartas, Articuli Cleri, Statut' Ebor'*, and *Prærogativa Regis*, 25 Edw. 3, and in the Original Writs in the Register, and the Indictments of Judgments thereupon, as the very Text it self: And that all the subsequent Year-books and Records for four hundred years, are but Commentaries and Expositions thereof. And in another place the same Author speaking of *Littleton's* Book, saith, That (c) *Littleton* is not onely the name of a Lawyer, but of the Law it self: Which Book he affirms to be the most absolute and perfect Work, that ever was written in any Humane Science. And afterwards reckons up (d) Fifteen sorts of Laws, which, he saith, are in force in *England*: Concerning many of which, it doth not appear, that *Littleton* wrote any thing. I will not say, That these Testimonies are repugnant: But this may well be said, That if the Assertions be true (considering also the huge multitude of Statutes now in force) then is the Law such an *Individuum vagum*, as no man living knows what it is, in respect of the variance and alteration thereof, from what it was in former times, both before and since *Edw.* the 4th his Reign when *Littleton* wrote. And hence it is, that the Judges themselves (who are said to be the speaking Law) in many cases (e) are divided, and Truth it self is oft-times set upon the Tenters, for want of a standing Rule, and because the Law lies meerly in Opinion, without other Foundation: which appears sufficiently every Term, by the Arguments of the Judges; and may be gathered by view of the many *Quære's* affixed to the *Reports* of former and latter times. And these Differences are not about Niceties or Trivial things, but about that which is called, The Foundation of

(c) Coke *Preface to his Com. upon* Littleton

(d) Coke *Com. upon* Littleton *Lib.* 1. *pag.* 11.

(e) *See* Brooks *Abridgment &* Dyers *Reports, and other the Year-Bookes, which in many Cases conclude with Quares & uncertainties.*

of Law, and, The Propriety or Liberty of the Subject.

(*f*) As in the Case of Ship-money, where the Judges were divided, and the *major* part adjudged that to be Law, which by the Parliament and Judges since hath been declared to be (*g*) against Law. But it may yet be questioned, What the Law is in that case: And surely, if the Law were so perfect as is pretended, what folly may be imputed to the wise men of the Nation, who in the several Parliaments have corrected and controlled *Littleton* and the Common Law, in near an hundred particulars, by Acts of Parliament since he wrote? And yet all these Alterations are said to be Amendments, for the benefit and profit of the People. And if the Theory be thus necessarily altered, and another face put upon it, and the Practick part more changed and corrupted (as shall appear in this Treatise) then must it be concluded, that the Law which now we have in use, is not the ancient Law of the land; nor that the same Law neither was nor is so perfect and certain, as it hath been commonly affirmed to be: But that the Law, as now it stands in use and practice, is a new pompous Edifice, erected upon some old Foundation, and become an Engine to draw wealth to the great Officers, Professors and Practicers thereof, to the impoverishing of the residue of the Subjects; not having any Foundation either in the Law of Nature, or on the Positive Laws of God, sufficient to bear up the same; and therefore can deserve no such commendation, or be held so sacred, as that it ought not, or may not, upon good ground, be altered and amended, and the Prolixities, Uncertainties, Difficulties and Extravagancies thereof reformed. It is observed by a (*h*) great Statesman, That those Laws are best, which are short, easie, few, accommodated to the Manners of the People, and for Publick good. Those are to be accounted Tyrannical Laws, which are many, obscure, difficult, like so many Snares to the People, and not tending to the advantage of the Publick: But whether our Laws are of the first or later sort, let the Reader judge. (*i*) A learned Civilian hath this saying, which he citeth out of *Bracton*, *Juris Praecepta*

(f) *Arguments of* Crook *and* Hutton *in* Hampdens *Case, Excheq. Chamber, Ann.* 1638.

(g) *Votes in Parliament,* 7 *Decem.* 1640 7 *Febr.* 1640.

(h) *Grotius Pol. Maximes,* Part. 1. cap. 4. pag. 34, 35. *Legem oportet esse brevem, quo facilius ab imperitis teneatur velut emissa divinitus vox. Jubeat non disputet nihil frigidius, nil ineptius quam lex cum Prolegomenis.* Coel. Rhod. l. 18. cap. 19. pag 699.

(i) *Cowel Instit.* l. 1. tit. 1. sect. 2. pag. 21.

sunt

Ex Bracton, l. 3. cap. 4. n. 6.

sunt hæc; Honestè vivere, Neminem lædere, Jus suum cuique Tribuere; i.e. The Precepts of the Law (or Right) are these; 1. To live honestly; 2. To hurt none; 3. To give to every one his Right. Whether these three Precepts comprehend all that men are bound to do in reference to the Law, I will not determine; but this I deliver positively, and doubt not but it's sufficiently proved in fourty Particulars in this Treatise, (which the Reader, if he please, may observe) That the Laws of *England*, both in their Redundancy and Excess, as likewise in their Want and Defect, are intolerably faulty; not holding forth Justice or Righteousness, in reference, or according to any one of those three Precepts. And the clear Reason and Cause of this Extravagancy, is, The rejecting of the Holy Scriptures, which are the *Onely Rule of Righteousness.*

Gal. 6. 16. 2 Tim. 3. 16, 17.

CHAP. II.

That the Law of God contained in the Holy Scriptures, ought to be the Foundation of all Laws used or practised amongst Christians.

(a) Willet Hex. in Exod. c. 21. qu. 1. p. 458.

(a) THat the Holy Scriptures are the Foundation of all just Laws, is a Truth undeniable, and evident to every one who hath any competent knowledge therein; comprehending in them as well the Dictates of the Law of Nature and right Reason, as all other things necessary for the Ruling, Guiding, and Ordering all the affairs of this life, whether Political, Oeconomical, or Personal: which appears by this, That *the Law of God* (b) *is perfect*; (c) That *the Holy Scriptures are able to make a man of God* (not onely the Minister, but every other man) *perfect, throughly furnished to every good*

Isidore *calls Law, a Constitution written agreeing with Religion, fittest for Government and Common Profit. Humane Law is a righteous Decree, agreeing with the Law Natural and Eternal,* Raleigh Hist. l. 2. c. 4. sect. 15.

Omne id quod ratione constitit. Greg. de Val. Ex Tho. Aquin. qu. 91. art. 3.

(b) Psal. 19. 7.

(c) 2 Tim. 3. 16, 17.

good work. And upon this ground is that Maxime founded, That no Act of Parliament or Law, repugnant to the law of God, is of any force. This is agreed amongst the Lawyers, and it's cited out of *Auguſtine*, by one of the moſt Learned for Arts and Tongues of that Profeſſion, That (*d*) *Omnium Legum eſt inanis Cenſura, niſi Divinæ Legis imaginem gerat.* (*e*) That Renowned King *Alfred*, who reigned *Anno Chriſti* 872, began his Laws thus: *Locutus eſt Dominus ad Moſem hos ſermones, Ego ſum Dominus Deus tuus*; and ſo recites the Decalogue, and then proceeds to mention the moſt material Laws ſet down in the 20, 21, 22, and 23 Chapters of *Exodus*, which he affirms to be the moſt apt and compatible for the Government of his Kingdome: and according to his Laws, his Government was bleſſed with univerſal Peace and Quiet, above other Kings of this Nation: (*f*) There being neither Thieves nor Robbers to moleſt the People.

(*g*) Now not onely the Decalogue, but alſo the Judicial Laws of *Moſes*, are an eminent Foundation of Politick Laws, holding forth plainly the Reaſon of Commanding and Prohibiting. Of theſe Judicial Laws, ſome belonged to the Jews properly, as being appendent to the Ceremonial Law, (*h*) as the puniſhment of him that touched a dead body: Others concerned the Jews Common-wealth in their own Land, as that concerning the year of *Jubilee*, *&c.* (*i*) The reſt are Laws of Common Juſtice and Equity, belonging to the Moral Law, as Expoſitions thereof, as the puniſhment of (*k*) Murther, and (*l*) Adultery, *&c.* with death. Theſe, and many others, (which ſhall be touched in their proper places) were given to the Jews as men, and did not onely binde the Conſciences of the Jews, but alſo of the Gentiles: And as the Morall Law is (*m*) principally grounded upon the (*n*) Law of Nature; ſo theſe Judicial Laws (called by *Moſes* Judgements) flowed from the ſame Fountain, and neceſſarily declared the puniſhments for the breach of the Moral

God hath ſpoken but once in the Holy Scriptures ſo fully to all doubts and caſes, and to all good works, that he needeth ſpeak no more. Whites way, Sect. 11. pag. 57. *If any thing be needful either to be known or done, the Scriptures teach it*, &c. Idem ex Eſpencæo, Com. 2 Tim. 3. 15, 16.

(d) *Finch* Νομοθεσια, l. 1. p. 3. Ex Auguſt. l. 3. de Civit. Dei.

(e) *Conference about the Power of Parliament.* Speech 3. p. 64. *Alfreds* Laws. *Powels* Court Leet, pag. 6. & 12, & 13. *Fox* Acts and Mo. V. 1 p. 185

(*f*) *Fournier* Geogra. Orbis notitia, l. 5. pa. 1. c. 10. p. 220.

(*g*) *Cok.* Engl. Law, pag. 107, 108, 109. *Cok.* Eſſay, p. 168, *Bod.* de Rep. l. 1. p. 44. *What Law can there be more juſt, more ſtrong & indifferent, or better, then the Laws of God?*

(*h*) *Willet* in Exo. *genesobſer.* qu. 4. *upon the whole book*, p. 3.

(*i*) *And in* c. 22 qu. 3. Com. 8. p. 492.

(*k*) Exod. 21. 12.

(*l*) Lev. 20. 10.

(*m*) *Willet* in Exod. qu. 1. & 2. p. 458.

(*n*) *Bodin.* de Rep. l. 1. p. 46. *Reaſon and the Law of God ſhould always take place, & every where, not being ſhut up within the bounds of* Paleſtine.

ral Law, which are not therein expressed. (o) And this use our Lord Jesus makes of the Judicial Laws.

Now a Judicial Law may be known to be a Law of Common Equity, from other Judicial Laws, which did onely binde the Jews in the Land of *Canaan*;

(p) First, if wise men of other Nations, as well the Jews, judged it to be equal and just, by Natural Reason and Conscience.

Secondly, if such Law did serve to confirm any of the Ten Precepts of the Decalogue, or to uphold any of the three Estates of Men, *viz.* Family, Common-wealth, or Church: and upon this ground is it, that *Moses* (the (q) first Reporter and Writer of Laws) in his Exhortation to the Jews, requireth them to observe (r) the Statutes and Judgements which he had taught them from God; which Judgements are the Judicial Laws. And this he tells them should be their wisdome and understanding in the sight of the Nations, saying, *What Nation hath God so nigh unto them, and that hath Statutes and Judgements so righteous?* And for this cause it is, that the Godly, Learned, (s) and wise Statesmen, have judged, That for the Civil Magistrate to alter this Law at his pleasure, as shall be thought fit for the time or manner of the Countrey, is to make himself to be thought to (t) be wiser then God, that onely *wise* (u) *Law-giver, who can save and destroy.* (w) *The foolishness of God is wiser then men.*

The Heathen Gentiles had a high esteem of *Moses* for a wise Law-giver: Let one speak for many: *Longinus*, of whom *Moses* is named, (x) Τῶν Ἰουδαίων νομοθήτης ἐνδοξότατος, The most Glorious Law-giver of the Jews. And although the Heathen were Idolaters, and regarded not the First Table of the Decalogue, accompting the Divine Worship of God a (y) Barbarous and Mischievous Superstition; yet they received those Judicial Laws, which were Laws of Common Equity. (z) *Nebuchadnezzar*, a heathenish Idolater,

(o) Mat. 15. 4. Mark 7. 10. *compared with* Exod. 21, 17.

(p) *Perkins* 1 Vol. *Treatise of Conscience*, p. 320, 321.

(q) *Coke* l. 7. fo. 12. *Calvins case*

(r) Deut. 4. 6, 7, 8.

(s) *Bodin.* Rep. l. 1. p. 104. *What apparent reason can there be devised, for which we ought to break the Laws of God? That it may be done in any case, the same Author there concludes most absurd.*

(t) *Willet* in Exod. *gen: Observ.* qu. 4. p. 3.

(u) James 4. 12.

(w) 1 Cor. 1. 25.

(x) *Longinus* περὶ ὕψους λόγου, pa. *Philo Judeus calls* Moses, *A most wise Law-giver.* Bod. Rep. l. 2. p. 211.

(y) Acts 25. 19. *Broughton* in *Daniel Conclus. Suet.* Tranq. vita Claud. Cæsaris, sect. 16. *Tac.* Annal. l. 2. c. 19. pag. 61.

(z) Jer. 29. 22, 23.

later, had learned to punish Adultery with Death. And (*a*) other wise Law-givers of the Heathen Gentiles, as some of the *Ægyptians*, *Gracians*, as *Draco*, *Numa*; and *Romans*, as *Julius Cæsar*, *Augustus*, &c. made Laws to punish (*b*) Murther, and Adultery, and Sodomy, with death, according to those Judicial Laws, *Exod.* 21. 12. and *Deut.* 22. 22. *Levit.* 20. 13.

(*a*) *Perkins* 1 Vol. *Treatise of Conscience*, p. 320. *Suet.* Tranq. in vita Jul. Cæsaris, sect. 48. & in vita August. Cæsaris, sect. 34. Anotat. *b*.

(*b*) *Tit. Liv.* l. 39. p. 1032. & p. 1034. K. & l. 33. p. 804. *R.* & 841. *B.*

It may be observed, That all Dominions (except Impious *Machiavel's*) have confessed, That Humane Prudence hath not power sufficient to foresee good and evil (so as to prevent the evil) and therefore did all Nations fly to God, some by a straight, others by a crooked way; and hence their (*c*) Laws were pretended to come from God. Upon all which I conclude, That all the Laws of *England* ought to have their Foundation upon the Laws of God: and yet this is no Judaizing, or departing from the Gospel, as some have vainly imagined; for that it appears clearly, (*d*) That *Moses* Law was given upon Gospel-grounds; and that the New Testament, especially the Doctrinal part thereof, (as well as the Prophet's) is a plain (*e*) Commentary upon *Moses*: and to this purpose it is not improper to apply that of our Saviour, (*f*) *I came not to destroy the Law, but to fulfil it.*

(*c*) *Grot.* Pol. Maxims, Par. 2. c. 8. p. 68, 69. & Cor. *in fine*. *Bodin.* de Rep. l. 1. p. 58. *Tit. Livius* l. 3. p. 110. *H.*

(*d*) Deut. 6. 5, 6 Exod. 20. 2. Luk. 10 27, 28 Matth. 22. 37, 38, 39. Gal. 3. 19.

(*e*) Mat. 5. 21, 27, 33, 38. James 2. 11. Heb. 4. 2, 6, 7.

(*f*) Mat. 5. 17, 18

And as to the matter in hand, that of the Apostle *Paul* (*g*) to *Timothy* puts it out of all doubt; the Law (namely, the Moral and Judicial) *is made for the lawless and disobedient; for the ungodly, and for sinners; for unholy and profane; for Murtherers of fathers, and Murtherers of mothers; for man-slayers, for Whoremongers, and them that defile themselves with Mankinde; for Men-stealers, for Lyars, for Perjured persons; and if there be any other thing, that is contrary to sound Doctrine, according to the glorious Gospel of the blessed God.* The (*h*) Law was made for the good, to guide them; and for the evil, to correct and punish them. And that these Laws were not punctually put in execution under the Gospel in the Primitive times, was not, because they were not in force against evil-doers, but because the

(*g*) 1 Tim. 1. 9, 10, 11.

(h) *The Law and the Gospel agree in substance and end, differing in circumstance of time, place, persons, dignity, and effects. The end of the Judicial Law, is to teach Natural Equity*, Ral. Hist. l. 2. c. 4. sect 9, 10, 11.

Ma-

Magiſtrates were Heathens, and received them not as the Laws of God, although they obſerved many of the Judicials, as before is ſaid. Now the chief end and ſcope of all Laws, ought to be Juſtice and Righteouſneſs. (*i*) Juſtice is the right diſtribution or diviſion of Rewards and Puniſhments, and of that which by Right belongs to every man. And where ſhall this Juſtice be found, but in the Holy Scriptures, which is that perfect Rule and Law of Juſtice and Righteouſneſs? Without this Guide, men have no more then that glimmering Light of Nature to lead them; which although it retain general Principles of (*k*) Right and Wrong (as one may ſo ſpeak) ſince the depravation thereof by the fall of Man; yet we ſee by Experience, That the moſt wiſe Lawgivers, who had the beſt endowments of Nature, elevated and much perfected by Humane Learning and Knowledge, (without the knowledge of the Divine Law, contained in the Holy Scriptures) erred and wandred far and wide in many things, as men blinde-folded and led aſide by their luſts and paſſions, and chiefly for want of this Golden Rule to walk by. And if no more could be ſaid of this ſubject, this were ſufficient to ſatisfie any rational man, That there is an abſolute neceſſity to compare (*l*) all Laws with the Laws of God, and to frame and ſquare theſe our Laws according to that Patern: For that nothing can be, or be truly accounted Right, which is not agreeable thereunto. And therefore (*m*) the Jews called their Book of the Law, *The Book of Right*; or, as it's obſerved the *Caldæan* Interpreter hath it, *The Book of Rightneſs*, having no crookedneſs or error in it, nor ſuffering ſuch as walk by it, to turn out of the way.

(*i*) *Bodin.* Rep. l. 6. c. 6. p. 755.

(*k*) Idem *Bod.* Rep. l. 6. c. 6. p. 761. *Tac.* Annal. l. 1. c. p. 2.

(*l*) *Vis Magiſtratus eſt, ut præſit præſcribatq; quæ recta & utilia, & conjuncta cum legibus; ut enim populo præſunt Magiſtratus, ita Magiſtratibus leges: Lex ſimul cum mente divina orta Creditur.— Itaque vera Lex & Princeps apta ad Jubendum votandumq;, ratio eſt recta ſummi Dei,* Cœl. Rhodig. Lect. Antiq. l. 8. c. 1. p. 279.

(*m*) *Bodin.* Rep. l. 6. c. 6. p. 759.

CHAP.

CHAP. III.

That the Law of England, *as now it is in use, is a departing from the Law of God, and a taking of a Law from Heathens and Idolaters.*

IT is not to be doubted, but as these Judicial Laws were the Foundation of the Imperial or Civil Law; so were they of the *Saxons*, *Danes*, and *Normans* Laws; amongst which, many particulars of those Judicial Laws are found extant, as amongst the Laws of this Nation, which herein in their fit places shall be made appear. But the *Roman* Clergie, or rather Idolatrous Priests, being Chancellors, Judges, Reporters, Scribes and Compilers of our Laws; to these Laws of Common Equity, added many Heathenish, Impious, Superstitious, and wicked Customes, and imposed the same upon the poor conquered and enslaved People, for Laws: Which things when we consider, and what is reported by Sir *Edward Coke*, (*a*) That in the time of *William* the Conqueror, and long after his time, the Chancellor, Treasurer, and Judges, were for the most part Bishops, Monks, & men of the Church, (as he calls them) of whom he names very many expert in the Common Laws, and such as wrote the same; We may easily judge what Laws we were like to have from such men; surely such as their Religion then was, in the very darkest night of of Popery; which must needs produce nothing so much as Idolatry, and the Oppression and Persecution of the Saints; like the (*b*) Statutes of *Omri* and *Ahab*, according to that of the *Psalmist*, (*c*) *The dark places of the earth are full of the habitations of cruelty.*

(*a*) *Coke Com. Littleton*, l. 3. c. 9. sect. 535. *and his Preface 8 Reports.*

(*b*) Mic 6.16. 1 King 22 26. 1 Kin. 16. 25 27

(*c*) Psal. 74. 20

Upon these grounds it may be cleared, That we are much departed from the Law of God, and have received a Law from Antichrist: and it will further appear in the particulars following, That many wicked and profane Incroachments are made by our Laws upon the honour of God, in abuse of

his Holy Name and Worſhip; and thereby alſo great Iniquities, Injuſtice, Wrongs, Oppreſſions, Deceits, and Falſehoods, practiſed, maintained and acted continually towards all ſorts of men, as well by colour of divers Statutes, as the Common Law now in uſe and practiſe.

But for the preſent, let it be obſerved, That the whole Body of Popery is (in a manner) comprehended, (*d*) in *Littleton's* Book (which is ſo much commended by Sir *Edward Coke*) and that the old Statutes made in affirmance of the Common Law, and the Books and Entries whereof he makes mention, are ſtuffed with all manner of Superſtitions, and Idolatrous Rights and Cuſtoms.

(*d*) *See* Coke *upon* Littleton *under theſe Titles*; *Abjuration, Exile, Appeal*; *Advowſon, Biſhops, Appropriation, Clergie, Divorce, Excommunication, Hereſie, Frank Almoign, Marriage, Parſon, Patron, Preſentation, Profeſſion, Quare impedit, Tythes, and upon the old Statutes.*

And if any man ſhall be offended, that I do not lick the ſores of Juſtice *Littleton*, and Sir *Edward Coke*, the two great Idols of the Law: It ſufficeth me to know, That the firſt did (*e*) according to the Religion then in uſe, and it may be according to the Dictates of his own Conſcience; and in many things hath judiciouſly taught the ſucceeding Ages: but therefore hath not deſerved to be accounted an Oracle. And for th'other, I think of him according to (*f*) the Character given him by that Incomparable Learned Sir *Francis Bacon*, in a Letter to him after his diſgrace.

(*e*) Littleton *was a Judge in the Reign of King* Edw. 4.

(*f*) *Scrinia Sacra.* Cabal. p. 61, 62, 63.

And ſomething more I could ſay, That he was a man of a bitter ſpirit againſt the dear Servants of God: and if he ſhould be judged according to the Judgement he gave of the moſt ſincere Profeſſors of Chriſts Goſpel, the (*g*) followers of *John Wickliff*, abuſively called *Lollards*; and his (*h*) judgement of Queen *Elizabeth* and Kings *James*, whom he blaſphemouſly calls, *The Fountain of all Piety and* (i) *Juſtice, and the life of the Law:* A rational man, indued with any knowledge of God, would think ſuch a man too ignorant of the wayes of God, to be accounted an Oracle, or termed, The ſpeaking Law (as every Judge is) or, A Promulgator thereof.

(*g*) *Coke* l. 5. Part. 1. *Cawdreys caſe* f. 25.

(*h*) Coke *in the Title-Pages of his Books of Reports being* 11.

(i) *The Law of the* 12 *Tables is called by the Roman Hiſtorian,* The Fountain of all Juſtice, *Tit. Liv.* l. 3. p. 112. H. *and out of this Heathen,* Sir Edw. Coke *learned this Blaſphemy.*

Now

Now if it ſhall be cleared, without doubt, whence our Laws came, and that they contain ſuch Impieties and Injuſtice as are before touched; (I ſay) when that ſhall plainly appear, every Chriſtian, whoſe heart God ſhall open to ſee the truth, will aſſuredly be ſatisfied in his Conſcience, That this Law ought to be changed, or greatly amended; ſeeing that Chriſtians ought to be ſo far from receiving the (*k*) Mark of the Beaſt, by taking Laws from Idolaters, that they ought to root out their Idols, and all (*l*) their Superſtitions from under heaven: For that whileſt things ſtand as now they are, we cannot expect the comfortable Preſence of God ſo effectual for our good and protection, as if they were removed; according to that (*m*) of the Holy Ghoſt by the Prophet, *Shall the Throne of Iniquity have fellowſhip with thee, which frameth miſchief* (n) *by a Law?* And if we conſider, that theſe Popiſh Laws coming from Idolaters, branded this Nation with the Mark of the Beaſt, which all thoſe Kingdoms and Common-wealths received, who were under the Power of Antichriſt, (as this was) until King *Henry* 8. his time, who (although he caſt out the Pope's Supremacy, yet retained Popery) we may juſtly fear, that (without ſerious Repentance, which cannot be teſtified but by Reformation) the Maintainers and Countenancers of theſe Superſtitions (*o*) *ſhall taſte of the wine of the wrath of God, and be tormented with fire and brimſtone for ever.* But our God will ſave his people from their ſins, and deliver them from his wrath.

(*k*) Rev. 14. 9.

(*l*) Deut. 12. 3 Exod. 23. 13. & 34. 13. 2 King. 18. 4. Hoſ. 2. 17. Zech. 13. 2.

(*m*) Pſa. 94. 20

(n) *Such Laws as are contrary to the Laws of God and Nature, the Prince may abrogate at his pleaſure*, Bodin. Rep. l. 1. p. 105.

(*o*) Rev. 14. 9, 10, 11.

Howbeit, it concerns us to know, That (although *God* (*p*) *winked at the former times of Ignorance*) *yet now he commandeth all men everywhere to repent*; and, although we have hitherto failed of our expected Reformation, and that all the labour and pains taken in order thereunto, hath been loſt and fruſtrate, becauſe a Patern from Gods Word was not ſought for, which may be imputed to be the true cauſe thereof; yet at laſt it may be found, that the Moral and Judicial Laws of *Moſes*, and other Rules and Conſequences from Scripture, are a ſufficient ſtanding Rule in all caſes, not onely for Godlineſs, but alſo for Righteouſneſs, Juſtice, and Sobriety; according to that of the (*q*) Apoſtle to *Timothy*, herein before recited. And it is to be hoped upon very

(*p*) Acts 17. 30

(*q*) 2 Tim. 3. 16, 17.

good grounds; That the neerer we come to perfect Reformation, the more we ſhall taſte of Juſtice and Righteouſneſs in the (r) execution of holy and juſt Laws, under ſuch Judges and Magiſtrates as were in the beginning; which is to be earneſtly prayed for; knowing, That good Laws are more ſecurity to the People, then good Magiſtrates: But when Almighty God giveth both together, that's an eminent ſign of his ſpecial favour. (ſ) And this is promiſed to the People of God in the later times, and now began to be fulfilled in this Nation, in as much as the bleſſed Goſpel of our Lord Jeſus Chriſt, and the People of God in the Profeſſion thereof, have more freedome and incouragement to Worſhip God according to his Divine Will, then ever *England* enjoyed in any former Age, either before or ſince the laſt Reformation. But it's much to be lamented, that many who within this Age ſuffered Perſecution under the tyranny of the Biſhops and Archbiſhops, upon pretence of breach of theſe our Laws, in not conforming to Order and Diſcipline; They themſelves, under the ſame pretence of Order and Church-government (as they call it) are now as ready to perſecute their Brethren, whoſe Conſciences are not juſt of their Size (if they could get Power into their hands, to execute their Canons and other Popiſh Injunctions) as ever the Biſhops were ſince Queen *Maries* dayes. For although they, with the *Scots*, are glad to be rid of the Biſhops; yet they (at leaſt many of them) have the *Scotch Presbyters* Spirit in them, (t) who in his Church-Hiſtory commendeth the People of *Antiochia*, that they were very friendly to their Paſtor *Flavianus*; and that they finding a great Number of Monks, favouring, as he ſaith, of *Eutyches* Error; and having an intent to compel their ſaid Paſtor or Biſhop to accurſe or abjure the Councel of *Chalcedon*, (but how their purpoſe was manifeſted, doth not appeare in the Story:) The People ſet upon the Monks (as not long after, the honeſt Monks of *Bangor* were ſet upon) ſlew a number of them, others leaped into the River *Orontes*, where (as the *Scotch Presbyter* ſaith) they found a meet burial for Seditious Monks. There is no means under Heaven certain to preſerve the People of God from Perſecution, but the aboliſhing

(r) Iſa. 60.17.

(ſ) Iſa. 1.26.

(t) *Simſon* Church-Hiſt. *in the Life of* Anaſtatius, Cent. 6. p. 88.

of

of all Popiſh Laws, and to Conform our ſelves to the holy Laws of God. And that is the ſcope of this Treatiſe.

CHAP. IV.

That Magna Charta, *and* Charta Foreſtæ, *do not appear to be any Acts of Parliament (although they be ſo called:) That chiefly therein was intended, the advancement of the* Romiſh *Power in a Tyrannical Government.*

FIrſt, it is to be conſidered, That upon the *Norman* Conqueſt by Duke *William*, (*a*) the bulk of all the Lands in *England* (ſome few excepted, *Wales* being then a Kingdom of it ſelf) were divided to ſuch Noblemen, Commanders, and Gentlemen, as joyned with him in the Conqueſt; the deſign not being carried on by himſelf alone, but by the forces, helps and purſes of many others, who were to ſhare with the Conqueror therein: who beſides what he reſerved in Demeſne, he divided the reſt to his Friends and Aſſiſtants, to be holden of him by ſuch Tenures, Rents, and Services, as he thought fit; ((*b*) as the *Romans* had done a thouſand years before.)

(*a*) *Fox* Acts & Mon. Vol. 1. pag. 221, 222. Ex *Henrico Huntingdon*, l. 6.

(b) *The Romans ſubdued the Britains to be Subjects, but not to be Slaves: They were willing to pay all Levies of Men and Money, if Inſolencies were forborn: Tacit.* in vita Jul. Agricolæ, p. 188.

(*c*) This occaſioned the great Survey of *England* to be taken, called *Dooms-day-Book*; wherein were ſet down, all the Lands in *England*, and in whoſe poſſeſſion they were. Upon this Diviſion, the Natives (*d*) were horribly oppreſſed, and rigorouſly dealt with; inſomuch, that it was afterwards a (*e*) ſhame to be accounted an *Engliſh*-man; which cauſed very many to remove into *Wales*, and other Countreys, rather

(c) *Cambdens* Britannia, p. 94. *Cowels* Interp. *word* Doomſday. Lamberts *Expoſition of Saxon words*, Jus Dacorum.

(d) *Stow* Annal. p. 10. *Life of King* William *the Conqueror*. Cok *English Law*, p. 24, 25.

(e) *Fox* Acts & Mon. Vol. 1. p. 222. col. 2.

rather then to abide the Tyranny of the *Normans*; and the reſt were left to the mercy of the Conqueror, and the Strangers who came with him; who (*f*) thereupon altered, or rather abrogated the Laws of *England*, and put upon them the Cuſtoms of *Normandy*, written in the French Tongue: and for ought appears, the Nation had no conſiderable ſettlement by Laws, until *Hen.* 3. his time, when theſe Grants and Cuſtoms were procured and confirmed. And it appears clearly, upon peruſal of the Statute called *Magna Charta*, That the ſame was but onely the Grant of King *Hen.* 3. and the confirmation of King *Edw.* 1. and ſome of his Succeſſors; and the end and ſcope of it, is, the upholding of Tyrannical Government, and the advancement of the Power of Anti-Chriſt. And although by ſome particulars in the ſaid Charter, Tyranny ſeemed ſomewhat to be eclipſed, or bound up, by the Kings own Conſent; yet in other particulars it is as much enlarged and confirmed: which appears, upon view of the Second, Third, Fifth, Seventh, Eight and twentieth, One and thirtieth, and Two and thirtieth Chapters of the ſaid Charter; wherein proviſion is made according to the Law of the *Normans*, (*g*) to ſettle Tenures by *Knights Service*, and *Capite*; and all the Slavery and Oppreſſion which that Tenure drew with it, to wit, Wardſhip of the Body, *Primer Seiſin*, *Muſne Rates*, *Marriage*, *Relief*, Suing *Livery*, or *Ouſter le Main*, and all ſuch-like Miſeries, as were the Badges of a Conquered and Enſlaved Nation: All which Laws are (as it's hoped) taken away, with their Rack or Inquiſition-houſe, the late Court of Wards.

(*f*) Stat' Ebor' 12. Ed. 2. *in Preface. Plowd.* Com. fo. 129. B. *Fourn.* Geogr. Orbis Notitia, l. 5. part. 1. c. 11. pag. 224.

(*g*) *See the Cuſtoms of* Normandy *upon theſe ſubjects in the ſeveral Titles.*

And beſides this, the Laws impoſed upon the People were then written either in French or Latine, which the Vulgar of the Engliſh underſtood not, and yet they were bounden to obey, under ſevere Penalties. And although ſome of thoſe Laws have been ſince tranſlated, yet many of the old Statutes, and the bulk of that which is called, The Common Law, do yet remain in the Latine and French Tongues, untranſlated, to the ſhame of the Nation; as if we were reſolved for ever to wear the Tokens of our former Captivity.

That this Charter, called *Magna Charta*, chiefly intended the

the advancement of the Power of Antichriſt, there is nothing more evident, and needs no other proof, but what is therein contained.

(*b*) Firſt, in the preface of King *Hen.*3. to the ſaid Charter, it's mentioned to be granted for advancement of holy Church; that is, the Church of *Rome:* and the ſame is done in the Confirmations of the ſame Charter, (*i*) by divers of the ſucceeding Kings. And the Grants to all the (*k*) Archbiſhops and Biſhops, Abbots, Priors, and all thoſe Popiſh Orders, clear what was intended by the ſaid Charter.

(h) *Preface to* Magna Charta

(i) *Stat'* 25 Ed.1.c.1. 1 & 2 Ed.3.1 R.2.

(k) *Coke* Inſt. 2.part. Pa.1. *In Charters of Creation of Dignities, the directions have always been* Archiepiſcopis, Epiſcopis, Ducibus, *&c. and his* teſtibus *in the end, as* Magna Charta *hath, which is a Badge of the Kings Grant, and no Act of Parliament.*

In the beginning whereof, the King granteth to God, that is, either to the Pope or the Prieſt; for ſo it's to be underſtood in the Law, where a Mortuary or Tythes are paid, they are ſaid to be given to God, but they go to the Prieſt. So a *Deodand*, whatſoever moveth to the death of any man accidentally ſlain, is ſaid to be given to God; but it was uſed to be diſpoſed of by the Kings *Almoner*, who was ſome Biſhop.

(*l*) Then in the firſt Chapter the King grants, That the Church of *England* ſhall be free (not from *Rome*, for the Pope rode the whole State, both Eccleſiaſtical (as they called it) and Civil, from the Conquerors time, until King (*m*) *Hen.*8. but) from the Secular Power; that is, Antichriſt ſhall ſo far prevail and be exalted, that all his Vaſſals, Prieſts and Clerks, ſhall be free from the Temporal Laws, and Civil Power or Authority: Inſomuch, that if the Ordinary would acknowledge any man for a Clerk, he ſhould be taken from Judgement, and be diſcharged of all his Crimes and Offences, be they never ſo heinous.

(l) *Anſ.* 5 *Rep.* Coke, *Caudreys Caſe. Inſtances in all the Kings from the Conqueſt until* Ed. 6. c.7. p.155, 156, 160, 168, *to the end of the book.*

(m) *Fournier* Orbis Notitia, parr.1. l.5. c. 12. p.225. *Preface to* Magna Charta, &. c.5.14.

And the Priviledges granted to the Popiſh Clergie, in the 5th and 14th Chapters of the ſaid Charter, do further confirm, what the Kings intention was in making the ſaid Grant or Charter, nothing more then the advancement of the Popes Power.

And

And as concerning the Charter of the Foreſt, a (*n*) conſiderable part thereof contains matters trivial, and of mean concernment: And that part of it which beareth the moſt weight, was in it ſelf a great Oppreſſion to the People: And the beſt which can be ſaid of both the ſaid Charters, is, That they were (*o*) the Badges of a Popiſh Kings Favour, and are ſaid to be granted for the Salvation of his Soul, and the Souls of his Progenitors and Succeſſors. And we may remember, how by colour of the ſaid Charter of the Foreſt, the Juſtices in *Eyre* tyrannized over the People living in or near the Foreſts (not long ſince, the moſt conſiderable part of the Nation, (*p*) being like to have been brought within the compaſs of the Foreſts, and ſubject to theſe Foreſt-Laws:) And what vaſt ſums of Money have been exacted for Fines impoſed, for building, hedging, incroaching, and other advantages taken againſt them in the ſaid Foreſts; And what Wrongs and Oppreſſions have been done to the ſaid Inhabitants, by the colour of the ſaid Laws, it's too well known: And (*q*) how many Towns have been deſtroyed to make a Foreſt, and yet the poor People might not kill the Deer, although they did eat up and ſpoil their Corn, what price ſoever it beared.

But it is to be hoped, That the Lord *Protector* will put theſe Foreſts to ſome better uſe, then formerly they have been put unto; the (*r*) Original of them being for Coverts for wilde-beaſts and wilde-fowl.

And laſtly, theſe Charters, although haply they do contain ſome things which were the Laws and Cuſtoms of *England* before that time; yet they have alſo the Laws and Cuſtoms of *Normandy* thereunto added; having no ſhew or colour of an Act of Parliament, in which the People were intereſted as parties to the making thereof; both the ſaid Charters being called, The Grants of King *Hen.* 3. and the Confirmation of K. *Edw.* 1. (*s*) And in concluſion termed, The Kings Letters Patents, as all other the Kings Grants are; and the Witneſſes Names ſubjoyned in Teſtimony thereof: which are improper for Acts of Parliament.

(*n*) *Charta Foreſtæ*, c. 6, 9, 10. 11.

(*o*) *Magna Charta eſt liber ſeu codex conſtitutionum quas* Hen. 3. *ad utilitatem ſubditorum ſuorum promulgabat*, &c. *Cowel.* Inſtit. Index Expoſit. Lit. M.

(*p*) Cok. *Engl. Law*, p. 48.

(*q*) Cok. *Engl. Law*, p. 25.

(*r*) *An ancient Manuſc. Expoſ. Foreſt Law*, fo. 1, 3.

(*s*) *See the concluſion of* Magna Charta. *The Statute* de Bigamis *is ſaid by* Shard *Juſtice to be no Act of Parliament upon this ground*, Coke Inſtit. 2 part. p. 267.

(*t*) And

(*t*) And we finde it Recorded, That the Charter of King *John* was avoided, as a voidable Grant: And that King *Ed.* 1. (after the Confirming of the ſaid Charters of *Magna Charta*, and *Charta Foreſtæ*) by the Advice of *Hubert de Burgo*, Chief Juſtice of *England*, (the principal Oracle of the Laws in thoſe times) cancelled the ſaid Charters; and declared, That he was not bounden to obſerve them, in regard he was under age when he granted or confirmed the ſame. And this is ſaid to be done by Advice of his Councel at *Oxford*: which is a ſufficient proof, that the ſame were no Acts of Parliament; for that although Non-age may make mens Grants voidable, yet the minority of the King cannot prejudice any Act of Parliament, Becauſe ſuch Acts are the Agreements of the People, to which the King gives but his Aſſent. And this may ſuffice to be ſpoken touching the ſaid Charters.

(*t*) *Coke* Inſtit. 2 part. Proem. p. 2, 3. Hubert *who liv'd when* Magna Charta *was made, and was a witneſs to it, knew the nature of it better then any one in theſe dayes, who know but by Tradition or conjecture* K. John *granted ſuch a Charter, which was impeached by his Succeſſors, becauſe it was made when he was* in Dures; *and the ſame is laid aſide, and not regarded.*

CHAP. V.

That the Statutes of Marlebridge, Weſtminſter 1. *and the reſt of the old Statutes, ſaid to be Declaratiry of the Common Law, ſavour of the Power of Antichriſt, and contain in them manifold Impieties and Superſtitions.*

THe ſaid Statute of *Marlebridge* (in Chap. 12. concerning *Derrain Preſentments*, and *Quare Impedit*; and Chap. 28. concerning the proviſions for Succeſſors of Biſhops) containeth matters Superſtitious, and tending onely to uphold Popery, and are lately in effect all aboliſhed, by the abrogating of the Archbiſhops and Biſhops: which ſhews the uſeleſneſs of thoſe Statutes. And the ſame may be ſaid of the Statute of *Merton*, a great part whereof concerneth the like Superſtitions, which are aboliſhed. The Statute of *Weſtm.* 1. was made likewiſe with reference to the advancement of the

Marl. c. 12. & 28.

Coke Inſtit. 2. part. *in the preface*, p. 79. &c. 6. p. 90.

Weſtm.1.c.2. State of Antichriſt, as appears by the Preface to the ſaid Statute. And in the ſaid Statute is likewiſe ſet forth, as warranted by Law, the Champions Oath in a Writ of Right; which is many wayes ſinful, as ſhall appear where this Champions Oath, and Tryal by Combate are particularly handled: and the proviſion made in the ſaid Statute for upholding of Biſhopricks and Superſtitious Houſes, and the ordering of a Clerk convict for Felony, who notwithſtanding his Conviction, ſhall be delivered to the Ordinary, and ſo eſcape; which is ſaid to be according to the priviledge of holy Church. Theſe Laws are Superſtitious and Unlawful.

(a) Stat. de Bigamis, c.5. 25 Ed.3. c.4. (a) The Statute *de Bigamis*, and a Statute made 25 *Edw.*3. which Ordain, That ſuch Clerks as ſhall be twice married, (being attaint of Felony) ſhall not be delivered to the Prelates as Clerks, but that Juſtice ſhall be executed upon them as upon other Lay-people: This is a fooliſh Law, that being twice married ſhould be accounted an offence: and the ſame Law is altered by a Statute made 1 *Edw.*6. Chap. 12. In Chap.5. of the Statute *de Bigamis*, care is taken to preſerve the Conſtitution of the Biſhop of *Rome* (concerning the Priviledge of Clerks) which Biſhop is there called, *Dominus Papa.*

Coke Inſtit. 2 part. pa. 273. *Pope* Boniface *the* 8 *his Counſel at* Lyons *in* France. By the Statute of *Gloceſter*, Chap.8. it is Ordained, That none ſhall have Writs of Treſpaſs for Goods taken, unleſs he ſwear by his Faith, That the Goods taken were worth forty ſhillings; and if he complain of beating, he ſhall ſwear by his Faith, That his plaint is true. The intention and ſcope of the Law is good; but the making an Idol of a mans Faith, and putting it into the place of God, the great Judge, is wicked Profaneneſs, and a breach of Gods Law.

The Statute of *Weſtm.*2. Chap.5. concerning *Darrein Preſentments*, *Quare Impedit*, and *Advowſons of Churches*, is Superſtitious, and ſerves for nothing elſe, but the ſetting up of Humane Preſumptions, in oppoſition of the Ordinances of Chriſt in his Church. And the ſame Statute, Chap.34. appointing, That he that carrieth a Nun away from her houſe, although ſhe conſent, ſhall have three years Impriſonment, and be Fined, is a Superſtitious Law, and tends to uphold the Antichriſtian Power of *Rome*. And the ſame Statute, Chap.35.

En-

Enacting, That he that takes away a Ward, and marrieth her (after years of conſent) ſhall abjure the Realm, is a profane Law, and againſt the lawful uſe of an Oath.

The Preface to the Statute called, *The Award between the King and his Commons at* Kenelworth, *and the Curſe thereto annexed*, containeth matters Impious, if not Blaſphemous, and not fit to be preſerved, being a Monument of Idolatry.

The Statute concerning Conſultations, 24 *Edw.*1. mentioning Eccleſiaſtical Judges, ſerved to uphold *The Spiritual-Court*, or *Court-Chriſtian* (as it is called.) The Statute of 25 *Edw.*1. Chap.4. giving power to the Prelates to Excommunicate the breakers of the Great Charter; and another Statute of *Edw.*1. put next-before the Statute of *Ireland*, giving the Prelates Power to pronounce Accurſed, all thoſe that do any thing willingly againſt the Charters, Chap.*6*. Theſe are Superſtitious Laws, and an abuſe of the Church-Cenſures, and the Power of Chriſt in his Church. In that Law called, *Articuli Cleri*, 35 *Edw.*1. the Church-yard is ſaid to be Dedicated: which Dedication is Superſtitious; no place under the Goſpel being more holy or dedicated then another.

The Statutes made 9 *Edw.* 2. concerning *Prohibitions, Tythes, Clerks convict, Eſtates, Spiritual-Court, Excommunication, Abjuration, Power of the Ordinary, Fee of the Church, Superſtitious Houſes, Monaſteries, Parſons, Parſonages*, containing ſixteen Chapters, are nothing elſe but Popery, and the advancement thereof.

The like may be ſaid of the Statute of the 25 *Edw.*3. Chap. 3, 4, 5, 7, 8, 9. concerning *Lapſes of Benefices, Clerks convict, Ordinary, Counterpleading of Title to a Church:* All which ſavour of nothing but Superſtition.

The Statute of the 13 *Rich.*2. 2. appointing the King to preſent to Churches: The Statute of Proviſors of Benefices, whereby the King and his Lords are to preſent to Churches; ſhewing, That the Pope did uſe to preſent to Biſhopricks, Religious-Houſes (as they are called) and Churches. The Statute of 25 *Edw.*3. whereby the Pope diſannulled the Statute of 18 *Edw.*3. concerning the Arraignment of a Clerk;

and many other old Statutes of the ſame nature, wherewith the Lawyers have been ſo much pleaſed, and whereof they have ſo much boaſted, are nothing elſe but the Badges and Characters of Antichriſt.

All theſe Laws are repugnant to thoſe Laws of God, which forbid Falſe Worſhip, Superſtitious and Humane Inventions in the Worſhip of God; being condemned as Will-Worſhip, and things that are meerly Idolatrous in State, ſerving for nothing but to uphold the Religion of the falſe Church of *Rome*, and are not to be uſed by Chriſtians, *Lev.* 20.23. *Hoſ.* 14.8. 2 *Cor.*6.16. *Deut.*12.3.

CHAP. VI.

That divers of the old Statutes, as well ſuch as are ſaid to be made in Affirmance of the Common Law, as others Introductory of New Laws, contain in them great Oppreſſions and Wrongs to the People, and ought to be amended.

(a) THe Statutes concerning Purveyance for the Kings Houſhold, where the Officers might take in a manner what they would at their pleaſure: This was afterwards changed into Money, 36 *Edw.*3.2. At the beſt, it was a heavy Oppreſſion to the People.

(a) *Articuli ſuper Chartas.* 3 Ed.1.c.7,31. 28 Ed.1.c.2. 10 Ed.3.c.1,4. 14 Ed.3.c.19. 25 Ed. 3. c. 1, 15,21. 34 Ed.3.c.2.

The like may be ſaid of all thoſe Laws concerning Villains, whereby they were accounted the Goods of the Lord, and might be bought and ſold, *cum tota ſequela*; which is ſaid to comprehend their Wives, Children, and Poſterity. And if any Lord pretended a man to be his Villain, the Lord might ſeiſe him as his Villain, although he had his Writ *de Libertate probanda* depending againſt the Lord, 9 *R.*2.

9 R.2. c.

By the Statute of 34 *Edw.*3. Chap.22. *He that findes a Hawk, and doth not reſtore the ſame, ſhall have two years Impriſonment, and pay for the Hawk; and if he have not where-*

with

with to pay, he ſhall continue longer in Priſon. (b) And by another Statute, *He that ſtealeth a Hawk, or detains her being found, ſhall be uſed as he that ſteals a Horſe.* And by another Statute, *He that ſteals a Hound, ſhall have a years Impriſonment.* Here a great mans Hawk or Hound is of as great a price, as a poor mans Liberty or Life. (c) A learned Stateſman obſerves, That a Common-wealth is often deſtroyed by ſuch kinde of Laws, as are made to the advantage of great ones, and the preſſure of the Common People.

(b) 37 Ed. 3. c. 19.

(c) *Grotius Pol. Maxims*, par. 2. c. 12. p. 129.

The Statute of 13 *R.*2. Chap.1. appoints the price of a Pardon for Murther to a common perſon, 200 Marks. This was in part Repealed 16 *R.*2. Chap.6. but the Power to Pardon Murther, was left in the King. Theſe are wicked Laws, repugnant to the Law of God, as ſhall appear in their proper places.

In Actions brought for the Kings Debts in others mens Names, unto whom they were bounden: although the Suits paſs for the Defendants, the Plaintiffs ſhould pay no Coſts, 24 *H.*8. Chap.8.

Appeals to *Rome* in caſes Teſtamentary, and concerning Matrimony, Divorces, Tythes, Oblations, Churches, *&c.* which it ſeems were allowed at the Common Law, were a great Oppreſſion. See the Statute 24 *H.*8. Chap.12.

The like Statute is made 25 *H.*8. Chap.19. whereby Appeals to *Rome* are prohibited; but there is power given to the Clergie (as they are called) to make Canons, which are Laws to binde and inſnare mens Conſciences: which Law being Repealed 1 *&* 2 *Philip* and *Mary*, Chap.8. was Revived 1 *Eliz.*1. By colour whereof, a great perſecution aroſe againſt the Non-conformiſts, which hath continued until theſe times, to the great Oppreſſion of the Godly of the Land: And ſome were put to death, and others pined and ſtarved by hard and long Impriſonment, by colour of theſe wicked Laws and Canons.

The Commiſſions of Sewers, grounded upon the Statute of 23 *H.*8. Chap.6. and 13 *Eliz.*9. are over-chargeable and tedious, and uſed as a great Oppreſſion to the People in the County of *Lincoln*, and parts adjacent.

The Commiſſion grounded upon the Statute of 13 *Eliz.* Chap.

Chap.7. and other ſubſequent Statutes made againſt Bankrupts, is grown a meer cheat of the People, very troubleſome and chargeable, and concluding nothing, but what is queſtionable again, either at Common Law, or in Chancery; and for the moſt part, whereas the Law intended a diviſion of the Bankrupts Eſtate to all his Creditors, it's either ſpent in Suits, or upon mercenary Commiſſioners, or concealed to the Bankrupts uſe.

The proceedings upon the Commiſſion grounded upon the Statute of the 5 *Eliz.*4. concerning Lands, Tenements, and Moneys given to Pious or Charitable Uſes, is a circular and expenſive way, chargeable in Execution, expenſive in drawing up the Inquiſition and Decree, and procuring a Writ of Execution of the ſame in the *Petty Bagge*: and when all this is done, upon Exceptions put into the Decree of the Commiſſioners, the Execution thereof is ſtayed upon a Motion in Chancery; and the Parties come then to begin the Suit again, putting in Anſwer to the Exceptions, as the Anſwer to a Bill: And thereupon the Parties go again to Examination of Witneſſes, and a new Hearing in Chancery; and either a Confirmation of the former Decree, or a Reverſal thereof: however, if the matter be under Three hundred pounds, it's commonly all ſpent in Suit, either for or againſt the Charitable Uſes. This is a great Oppreſſion, and cannot be avoided, whileſt things ſtand as now they are.

The Statute in the 25 *H.*8.11. appointing a whole years Impriſonment, for taking the Eggs of a Wilde-fowl, is a hard and ſevere Law.

The Statute of Intailing the Crown of *England* in the Poſterity of King *Henry* 8. may be a cauſe of great trouble, 25 *H.*8. Chap.22.

The Statute of 32 *H.*8.2. limiting the Preſcription of a Writ of Right, Aſſize, Coſenage, Ayle, *&c.* to no leſs then threeſcore years; and in a Writ of Entry *ſur Diſſeiſin*, to fifty years: this Statute doth more harm then good.

That a man's Hand ſhould be ſtruck off for ſtriking in the Kings Palace, and the party to have perpetual Impriſonment; a ſevere Law, 31 *H.*8.12.

That none may Pardon Felony or Murther but the King; and

and that he may pardon Murther, is an Impious Law, 27 *H.* 8. Chap. 24.

That it ſhould be Treaſon for a Popiſh Prieſt to be found remaining in *England*, giving no offence, nor making any diſturbance in the Common-wealth, is a hard Law, 27 *Eliz.* 2.

The Statute concerning Reformation of Diſorders in Miniſters, a Superſtitious Law, 13 *Eliz.* 12.

Divers Offices expoſed to ſale by an Act of the 5 and 6 *Ed.* 6. 16. is a cauſe of Bribery and Extortion.

Intailed Lands forfeited for Treaſon, ſeems to be an unjuſt Law, as now things ſtand; becauſe ſometimes ſuch Intails were made for valuable conſiderations: when Eſtates were all Fee-ſimple, it might haply be more juſt that there ſhould be ſuch Forfeitures.

The Law concerning Wreck of the Sea, which is, that if a Ship be caſt away, and the Goods float to Land, and neither Man, Woman, Dog nor Cat eſcape alive, the Owner ſhall loſe all the Goods: This is a wicked and unjuſt Law.

The Statute of the 21 *Edw.* 1. If a Foreſter or Warrener finde any Treſpaſſer wandring within his Liberty, intending to do damage therein, and do fly away, after *Hue and Cry* (that is, a Noiſe) made after him; the Foreſter or Warrener may kill him that ſo flies away, and he ſhall ſuffer nothing: This is a wicked Law, and againſt the Royal Law of God.

(*d*) The Statute, That an Attorney or Sollicitor laying out Moneys for his Clyent or Maſter, ſhall not demand or recover his Money, unleſs he can produce a Ticket under every man's Hand to whom he paid it; which is a thing impoſſible to be done: for that no Lawyer, Serjeant, Judge, or his Servant, will give any ſuch Ticket. It ſeems regularly, that Statute pleaded, is no Bar for a mans Fees; for thoſe are due where he layes out no Money, if the Attorney take pains: nor is it allowed in Bar of the Money laid out, if a juſt Bill be delivered under the Attorneys Hand: yet ſome Judges have allowed this, to hinder a man from Recovering a juſt Debt. This Law is a hard Law, and ought to be amended. (*d*) 3 Jac. 1. c.

(*e*) The

(e) 21 Jac. c. (e) The like may be ſaid of the Statute concerning Limitation of Perſonal Actions; which was Ordained to a good end, that Debts might not be twice paid: but now it's conſtantly uſed by Knaves, who owing Debts without Specialty, will drill men on, until the ſix years are up, and then will impudently plead the Statute, although they have never denied the Debt: But it may be Witneſſes are dead, or the Debtor or Creditor dead, or out of the Countrey, in the time of the late Warres, and ſo no Suit hath been brought within ſix years. This Statute hath undone many Tradeſmen in *London* and elſewhere. It were fit this Statute were amended, and ſomething put in to help the Creditor, where the Debt appears to be due, notwithſtanding the Suit was not brought within ſix years next after the cauſe of Action.

All theſe Laws are oppreſſive to the Subjects: And although ſome of thoſe laſt-mentioned, had ſome ground of Reaſon for the promulgation thereof; yet we ſee by experience, That thoſe, as well as the former mentioned under this Head, are grown to be prejudicial to all ſuch whom they concern, and are all againſt thoſe Laws of God which condemn Oppreſſion, *Ezek.* 18. 18. *Zech.* 7. 10. *Proverbs* 14. 31. and 22. 16. 1 *Theſſal.* 4. 6. *Iſaiah* 33. 15.

CHAP.

CHAP. VII.

That several Acts of Parliament made since Magna Charta, *and having the force of New Laws, contain in them many Idolatrous and Superstitious Rights and Customs against the Law of God.*

ALl those Laws which concern Presentations to Churches (as they are called) taking from the People that Liberty of choice of the Minister, which they originally had in the Primitive Times, as shall appear in it's proper place; and the imposing a Priest or Minister upon them against their wills, are Superstitious, and tend to corrupt the Worship of God, and to subvert the Order which Christ hath appointed in his Church; of which sort of Laws, are 13 *R.*2. Chap. 2. and 31 *Eliz.*16.

The Statutes disallowing Clergie in many cases, that is, hanging a man because he cannot reade, are both Superstitious and cruel Laws, 23 *Hen.*8.1. 25 *H.*8.1. All in holy Orders (as they are called) shall have (*a*) Benefit of Clergie; but afterwards they and all other men are ousted of Clergie in many cases, 28 *H.*8.1. 26 *H.*8.12. 32 *H.*8.3. 4 *&* 5 *Phil. & Mar.* 4.2. *&* 3 *Edw.*6. 20. *&* 33. 5 *&* 6 *Edw.*6. *Chap.*9, *&* 10. 18 *Eliz.*7. 39 *Eliz.*9. But it's observable, That Manslaughter, which is the killing of a man wilfully in hot blood, for which the Offender ought to die, was never ousted of Clergie. All these are Superstitious and wicked Laws.

(*a*) 4 H.7.c.13 4 H.8.c.2.

The Statute of the 25 *Hen.*8. 16. authorizing Judges and great men to have Chaplains, who may have a Benefice with Cure of Souls, and not be resident upon the same, implies two great Enormities:

1. That some Ministers may have a Benefice or Church-living, without Cure or Charge of Souls.

2. (*b*) That such Ministers may be absent from such

(*b*) 28 H.8.c. 13.

Church or People, and yet take the Tythes.

The Statute of the 25 *Hen.* 8. Chap. 20. about Conſecration of Biſhops, with all the Ceremonies thereabouts, is Superſtitious.

The Statute of the 25 *Hen.* 8. 20. appropriating to King *Hen.* 8. to be Supreme Head of the Church on Earth, Impious, if not Blaſphemous. This was Repealed the 1 and 2 *Phil. & Mar.* her Succeſſor was called, Supreme Governor, *&c.*

The Statute concerning Firſt-fruits and Tenths payable to the King, as they were formerly paid to the Pope, in imitation of the Jews paying to the High-Prieſt; all of them are Superſtitious Laws, 25 *H.* 8. 20. 26 *H.* 8. 3. 28 *H.* 8. 11.

The like Superſtitious are all thoſe Laws, which concern (*c*) Tythes, Oblations, and Church-duties (as they are called) 27 *H.* 8. 20. 32 *H.* 8. 7. 37 *H.* 8. 12. 2 *Edw.* 6. 13.

(*c*) 5 H. 4. c. 11

A Statute was made 34 and 35 *H.* 8. 1. prohibiting the Reading, or having Scriptures in Engliſh; commanding, That Religion ſhould be as the King ſhould appoint: he that ſhould Preach or Teach contrary to the Kings Injunctions, ſhould Recant his firſt Offence; abjure the Realm for the ſecond Offence; and for the third Offence ſhould be burned to Aſhes: This wicked and accurſed Law was Repealed 1 *Edw.* 6. 12. Preſently upon the making of this accurſed impious Law, 34 and 35 *H.* 8. 17. five new Biſhopricks were erected by the King: whereupon, King *H.* 8. in that Statute is highly extolled for his Piety. He caſt out the Pope, and made himſelf Pope, and retained Popery.

The Statute of the 37 *H.* 8. 17. appoints Eccleſiaſtical Juriſdictions to be executed by Doctors of the Civil Law: whereas all Eccleſiaſtical Power is in the Church.

All thoſe Statutes, which concern Uniting of Churches, Election of Biſhops, Advowſons of Churches, *Jus Patronatus*, *Quare Impedit*, are Superſtitious, and tend onely to the advancement of Antichriſts Power, 37 *H.* 8. 21. 1 *Edw.* 6. 1. 1 *M.* 5.

The Statutes againſt eating Fleſh in Lent, and at other times, little better then the Doctrine of Devils, 2 and 3 *Ed.* 6. 19.

The

The Statute 1 *M.* 3. forbidding to disturb a Priest or Minister in saying Mass or Divine-Service, or the breaking any Altar, Crois, or Crucifix; the Offender shall suffer Imprisonment, and be otherwise punished: This is a severe Law.

The Statutes appointing and setting up the Bishops above the Lords in Parliament, next to the King, as his Vicegerent, 31 *H.* 8. and all the old Statutes, and those of later times also, whereby the Lords Spiritual (as they are called) are placed before the Lords Temporal, as they are generally in all Acts of Parliament: this favours strongly of the Power of Antichrist.

The Statute of 1 *Eliz.* concerning the Oath of Supremacy, now out of use, and ought to be Repealed.

The Act for Reforming of Disorders in Ministers, a superstitious Law, 13 *Eliz.* 12.

The Statute of the 5 *Eliz.* 23. whereupon the Writ *De Excommunicato Capiendo* is grounded, is an impious wicked Law, as the Excommunication it self is a horrible Prophanation of the Ordinance of Christ in his Church.

The Statutes of 35 *Eliz.* 1, 2. appointing grievous punishments for not coming to hear Divine-Service (as it is called) and for Meeting in Private Houses for to Pray or Worship God: This is a wicked Law, and was an occasion of great Persecution for many years. Those Laws which create Apocryphal Saints, as *Thomas Becket*, called, *Thomas the Martyr*, 2 H. 5. 4.

The Statute of 25 *H.* 6. Chap. 5. equalling superstitious and Idolatrous dayes with the Lords-day; *Holy-Rood-day*, called, *Corpus Christi*, *Assumption of Mary*, *Good-Friday*, *All-Saints*, put all together with the Lords-day, called there *Sunday*: These are profane Laws.

The Statutes of 21 *H.* 8. 6. and 26 *H.* 8. 15. appointing the payment of Mortuaries, which are pretended to be given to God for the purging of the Souls guilt of the deceased, which he contracted by non-payment of Tythes: This is a superstitious Law, and a derogation from the All-sufficient Merits of Christs sufferings.

The Statute of the 3 *Hen.* 5. 4. contains in it Prayer for the Dead; a thing unlawful and superstitious.

There are divers Laws made against the Followers of *John Wickliff*, called *Lollards*, who in the Statutes are said to be Hereticks, who intended to subvert the Christian Faith, The Law of God, The Church, and the Realm, 2 *H.* 5. 7. and 5 *Rich.* 2. 5. 2 H. 4. 15. 25 H. 8. 14. These were the most sincere Professors of the Gospel. A Law was made 1 *Edw.* 6. 12. to Repeal the Laws against the *Lollards*: yet long after that, the High-Sheriffs were yearly sworn to extirpate these Hereticks, as they were called; and that clause was continued in the Sheriffs Oath, until the late Wars. Sir *Edward Coke* calls them Hereticks: we may see what Times have been, and how the bent of the Lawes have been to root out the Gospel, and to Establish Popery.

The Statute of the 4 *H.* 4. 18. That an Attorney playing the Knave, shall forswear the Court; This is an abuse of an Oath, and profaning the Name of God.

These Laws are all of the same kinde with those before-mentioned in the 5th Chapter, where the Statute of *Marlbridge*, and other old Statutes, made in affirmance of the Common Law, are recited; and are Repugnant to those Laws of God contained in the Holy Scripture, which are there expressed; as further appeareth in this Treatise, where most of these Laws are more particularly handled.

CHAP.

CHAP. VIII.

That the Common Law hath been altered and changed since Edw. 4. *his time, when* Littleton *wrote, in an hundred particulars; most of them of great Importance.*

BY the Statutes made since *Littleton* wrote, Assurances of Lands, and all Statutes and Obligations made upon Usurious Contracts against those Laws, are avoidable, and the Law therein altered since *Littleton* wrote. 37 H.8.c.9. 13 El.c.8. Coke Rep.l.5. fo.7.

2. By a Statute concerning the inrollment of Deeds, the Purchaser hath many Priviledges, which he had not at the Common Law in force before that Statute; as, the Estate in Lease, or a Reversion, passeth without Attornment, and the Purchaser may distrain for Rent. And if it be the Inheritance of the Wife, the Husband having Issue by her, shall be Tenant by Courtesie, and an Estate passeth without Livery. 27 H.8.c.16. Coke Rep.l.2. fo.36. l.4. fo. 70. l.5.fo.1. l. 7. fo.41. l.8. fo.93.

3. There were several Statutes made since *Littleton* wrote, enabling men to devise their Fee-simple-Lands by Will in writing; which regularly a man could not do by the Common Law, unless by Custom; which was but in some Boroughs, and some few other places. If the Lands were holden in *Knights Service*, the Owner might devise two third parts; if in *Soccage*, he might devise all: And since of later times, the Tenures in *Knight-Service* and *Capite* are abolished. 32 H.8.c.2. 34 H.8.c.5. 27 H.8.c.10.

4. At the Common Law, an Heir might have had an Action of Debt upon an Obligation made payable to his Ancestors and his Heirs: But the Law is now altered, and onely Executors and Administrators can recover upon such an Obligation. This is plain by the Probate of every Will, and is so in daily practice; for all the Goods and Chattels are Assets, and shall pay Debts to the Creditors, their Executors or Administrators. 13 Ed.3. dct. 135,139.

5. At

Coke Com. Littl. Dower, l.1. c.5. sect. 53.& 55.

5. At the Common Law a Woman should have lost her Dower by the Felony of her Husband, that Dower which was *Ex assensu patris ad ostium Ecclesiæ*, and her Dower by Custome: But now it's otherwise by several Statutes; and these two former sorts of Dower are now out of use.

27 H.8.c.9. Coke Rep. l.5. fo.27.

6. By the Statute of 27 *H.*8. Chap.9. A Joynture before Marriage made to a woman, is a Bar to a Writ of Dower, to be brought by the woman for the Third part of the Lands, whereof her Husband was seised during the Coverture: which was otherwise at the Common Law when *Littleton* wrote.

Westm.2. c.1.

7. By the Statute of *Westm.*2. Chap.1. If a man seised of Land in general Tail had taken a wife, and afterwards been attainted of Felony; before the Statute of the 1 *Edw.*6. the Issue should have inherited, although the wife should not have been endowed: But now she shall be endowed, and yet the Issue in such case shall not inherit the Lands which the Father had in Fee-simple.

1 Ed.6.c. Coke Com. Littleton, l.1. c.5. sect.53.

32 H.8.c.28. 13 Eliz.c.10. 18 El.c.20. Coke Rep.l.6. fo.37. l.11. fo. 67.

8. By vertue of several Statutes made since *Littleton* wrote, Bishops, Deans and Chapters, Halls and Colledges, Parsons, Vicars, and Governours of Hospitals, are disabled to make long Leases, or Conveyances of their Lands, belonging to them in right of their Corporations: And they may avoid such Leases as they shall make of such Lands, contrary to those Statutes; which they could not do when *Littleton* wrote: and the Law is altered in those Points by the said Statutes; and they are now restrained.

13 El. c.20. 3 Jac.c.4. 32 H.8.c.28.

9. Also by vertue of the same, and some other Statutes, Ecclesiastical persons may make Leases of their Benefices, so they be not non-resident, or absent fourscore dayes: and Tenant in Fee-simple in Right of his Church, Tenant in Tail, and a man and his wife seised in Fee or Fee-tail in Right of the wife, may make Leases of such Lands for three lives; which they could not do when *Littleton* wrote.

37 H. 8.c.10.

10. Before the Statute of the 27 *H.*8. If *Cestuy que use* had dyed, his Heir within age, the Lord should have had the Wardship of the Heir. If the Feoffee had dyed, his Heir within age, the Lord should have had the Wardship of his Heir also; so there should have been two Wardships for the same Lands. But this is altered by the same Statute.

4 H.7.c.41.

11. The

11. The Court of Wards, erected by vertue of the Statutes made since *Littleton* wrote, altered very many things in the Law, as may be seen by the Statutes: And particularly, he that was poſſeſſed of a term for 100 years or more, was judged to dye ſeiſed, Repugnant to the Common Law. 33 H.8.c.22. 34 H.8.c.46.

12. The whole Rabble of thoſe Eccleſiaſtical perſons (as they are called) Regular, and many of thoſe called Secular, are diſſolved by ſeveral Acts of Parliament; and ſo the many Laws concerning them, are thereupon out of uſe: And all the Priviledges granted to the *Ceſtercians*, *Hoſpitallers*, or *Priors* of S. *John's* of *Jeruſalem*, and other Superſtitious Houſes, to be freed from Taxes, Toll, and other Secular Services (except non-payment of Tythes) are altered and changed; and now thoſe Lands are uſually charged to all payments, as others are. 32 H.8.c.24. 27 H.8.c.27. 1 Ed.6.c.14. 31 H. 8.c.13. 37 H.8.c.4.

13. The Statute appointing, That ſuch a man's Executors as prove his Will, and take upon them Adminiſtration thereof, may ſell a man's Land deviſed to Executors for payment of Debts or Legacies, although others named Executors do refuſe to intermeddle, or to joyn in the Sale, and the Sale is good: That Statute was made ſince *Littleton* wrote, which is contrary to the Common Law. 21 H.8.c.4.

14. The Statute of the 21 *H.*8. Chap.19. gives the Lord power to avow upon the Land for Rent, or Services, or Damage *faiſans*, without naming his Tenant, becauſe there are ſometimes ſecret Conveyances made to ſtrangers, to couſen the Lord of his Services: and this an Alteration of the Common Law. 21 H.8.c.19. *Coke* Com. *Lit.* l.3.ſ.& 444 & 447.

15. All the Laws and Cuſtomes concerning Villains, mentioned by *Littleton*, That the Lord might kill them, ſell them, or uſe them, are in a manner abrogated or worn out of uſe, by reaſon that moſt of the Villains, and ſuch as held in Villainage, are Copy-holders, and by ſome act either in Deed or in Law, are Manumitted: which alters the Law in many particulars ſince *Littleton* wrote. *Cok.* Com. *Litt.* T.t. *Villenage*, l.2. c.11. ſect. 172,175,176, 177,189,&c.

16. The Tryal of men for Treaſons and Felony, and other Tryals between and Party and Party in Perſonal Actions, have been in ſeveral particulars altered by Acts of Par- 22 H.8.c.13. 1 & 2 *Phil.* & *Mar.* c.10. 33 H.8.c.20. & 23.

27 El.c.6,& 7. 4 & 5 Ph. M. c.7. Parliament, and the Forms changed, and new Pleadings and Proceedings introduced ſince *Littleton* wrote.

31 H.8.c.1. 32 H.8.c.32. *Litt.* l.3. ſect. 290. 17. There are ſeveral Acts of Parliament made ſince *Littleton* wrote, by vertue whereof partition may be made by Joynt-tenants, and Tenants in Common; which is otherwiſe at the Common Law, and is an alteration thereof.

31 H.8.c.3. 18. There was an Act made in the 31 *H.* 8. That the Mannors, Lands and Tenements of *Thomas* Lord *Cromwel*, and many others (to the number of 34 perſons) lying in *Kent*, & being *Gavel-kind*-lands, ſhould deſcend as other Lands at Common Law: This an alteration ſince *Littletons* time.

5 & 6 Ed.6.16 19. There are, by Statutes ſince *Littleton* wrote, divers Conditions annexed to Offices, which may forfeit the ſame; and were not ſo at the Common Law.

32 H.8.c.34. 20. Before the Statute of the 32 H. 8. Chap. 34. no Grantee or Aſſignee of a Reverſion, by the Common Law, could take advantage of a re-entry by force of any Condition: but by that Statute the Grantees or Aſſignees of any Reverſion, *&c.* of any Lands, *&c.* ſhall have advantage by entry for Rent, or doing of waſte, as the Leſſors or Grantors themſelves might have had.

32 H.8.c.38. 2 Ed.6.23. 1 El.c.1. 21. There were at the Common Law two ſorts of Divorces: 1. *A Menſa, & Thoro:* 2. *A Vinculo Matrimonii*; and many ridiculous cauſes of Divorce (of which Adultery is not reckoned to be one) againſt the Law of God; as, precontract without Conſummation, Conſanguinity, or Affinity in Couſin Germans, and ſo to the fourth Degree, The marrying or carnal knowledge of any perſon of Kin, to the ſecond Marriage-kindred within thoſe Degrees: Divers of which are remedied by Acts ſince *Littleton* wrote, and the reſt are antiquated, and for ſhame diſuſed; and now all men may marry any perſon not prohibited by Gods Law; and regularly, nothing is a cauſe of Divorce, but Adultery: and yet *Cauſa frigiditatis ſive Impotentia*, hath been allowed by the Bawdy Biſhops.

32 H.8.c.33. *Coke* Com *Lit.* l.3.c.6. ſect. 385. 22. At the Common Law, if a Diſſeiſſor, Abator or Intruder, had dyed ſeiſed, ſoon after the wrong done, the Diſſeiſſee and his Heirs had been barred of Entry, without any time limited by Law: But by a Statute made ſince *Littleton* wrote,

wrote, such Disseisees nor their heirs are not barred, except the Disseisor hath been in quiet possession five years, without Entry or continual Claim.

23. So likewise if the Disseisor had been longer in possession, by the Common Law the Disseisee could not have entred upon him; nor could the Disseisee have entred upon the Feoffee of the Disseisor, if he had continued a year and a day in quiet possession: But now the Law is altered, and onely a dying seised is a Bar in some cases. *Littleton*, l. 3. c. 6. sect. 385.

24. By the Common Law, after a Fine levied, he that had right, had but a years time to enter, after which he was barred: But by the Statutes made since *Littleton* wrote, he that hath right hath five years allowed to him to enter, after the Fine perfected. *Littleton*, l. 3. c. sect. 441. 4 H. 7. c. 24. 32 H. 8. c. 36.

25. By several Statutes since *Littleton* wrote, divers powers and authorities are given to Justices of Assize, which they had not at the Common Law, nor by any Statute, before those Statutes were made. 2 & 3 E. 6. c. 24. 34 & 35 H. 8. c. 14. 3 H. 7. c. 1. 1 Ed. 6. c. 7. 33 H. 8. c. 9.

26. By the Common Law, if a mans Land had been granted or setled to another, to the use of the Grantor, and to the Issue in Tail, the Land in Law had been the parties to whom it was conveyed; and (*Cesty que use*) he for whom the use was, had nothing but Equity to recover the Profits: But now since *Littleton* wrote, all possession is transferred to the use, and the Law changed, *Plow. Com.* 349, 6. *Coke* Com. *Lit.* l. 3. sect. 442. 27 H. 8. c. 10. *Coke* Com. *Lit.* l. 3. sect. 463, & 464.

27. By a Statute made 2 *H.* 5. all such Jurors as were to be returned for Tryal of Issues joyned in any the Courts at *Westminster*, or before Justices of Assize, were to have 40 *s.* by the year in Lands and Tenements, *&c.* By the Statute of the 27 *Eliz.* it is enacted, That such Jurors shall have 4 *l.* by the year at least, and so it is to be expressed in the *Venire facias*; which is an alteration since *Littleton* wrote. 2 H. 5. c. 3. *second Parliam.* 11 H. 7. c. 21. 27 El. c. 6.

28. All those special pleadings discussed by occasion of *Littletons* Text, *l.* 3. *sect.* 485. are taken away by several Acts of Parliament: And by the last Act of the 23 *Octob.* 1650. liberty is given in all cases to plead the general Issue; which is a great ease in most cases; although in a *Replevin*, the Law is rather worse then it was, as is shewed in its proper place. 23 H. 8. c. 5. 7 Jac. c. 5. & 12. Act 23 Octob. 1650. 21 Jac. c. 14.

29. By ſeveral Statutes ſince *Littleton* wrote, the times for commencing of real, and poſſeſſory, and perſonal Actions
32 H.8.c.2. are limited: Firſt, by the Statute of the 32 *H.*8. and after-
21 Jac.c.16. wards by the Statute of 21 *Jac.* By which Statute (it's ſaid) the Kings Right is concluded, as well as all other perſons; and barred after twenty years in all real Actions: Theſe are abridgements of the Law ſince *Littletons* time.

27 H.8.c.4. 30. All thoſe Laws mentioned by *Littleton*, concerning
1 Ed.6.c.14. Free Chappels and Chantries, and the caſes thereupon depending, are at an end by thoſe Statutes ſince *Littleton* wrote.

31. By ſeveral Statutes made ſince *Littletons* time, the petty
32 H.8.c.30. Errors in Pleadings, Miſpleadings, and Jeofailes, are helped
18 El.c.14. and amended, in real, mixt, and perſonal Actions; inſomuch, as where at Common Law every miſtake of a Letter, Word, want of Warrant of Attorney, or Miſreturn of any Writ, or
21 Jac. c.13. any other petty inconſiderable Error or Miſtake, was ſufficient to deſtroy any Action, or to arreſt or reverſe Judge-
A& 1652. ment. Now no Error before Appearance, nor any Error but what is matter of Subſtance, and of the Eſſence of the Action, can prejudice the Suit: This is an amendment of the Common Law.

32. The Law concerning ordinary Juriſdiction, and Spi-
Littleton, l.3. ritual Law (as they called it) which is diſcuſſed by *Littleton*,
ſect. 648. *Lib.*3. *Sect.*648. hath been ſince altered by the Statute of the
25 H.8.c.19. 25 *H.*8. which reſtraineth the Eccleſiaſtical Laws, that they be not repugnant to the Common Law, nor the Statutes and Cuſtomes of the Realm: and ſince, the ſame Law concerning ordinary Juriſdiction and Eccleſiaſtical Laws, are aboliſhed with the Hierarchy of Biſhops, *&c.* and their Courts.

33. Since *Littleton* wrote, there were two Statutes made to preſerve Remainders and Reverſions in Lands and Tene-
32 H.8.c.31. ments expectant upon Eſtates for Life; which (it ſeems) by the Common Law might be barred by a Common Recovery, or thereby the Entry of him in Reverſion or Remainder taken away: But by thoſe Laws, ſuch Recoveries by Tenant for life are void, and the Entry ſaved by the laſt Statute of
14 El.c.8. the 14 *Eliz.* which is contrary to the Law in force when *Littleton*

eleton lived, although the first Statute be Repealed by that last mentioned.

34. The like Law was concerning Tenant in Dower; If she had alienen in Fee with Warranty, and dyed, that Warranty had bound the Heir: But now, if Tenant for Life or in Dower alien, it is a forfeiture, and the heir may enter. This is a good amendment of the Common Law. *Coke* Com. *Lit.* l.3. sect. 697. 11 H.7.c.20.

35. If Tenant in Tail be in possession, or that hath Right of Entry, be attainted of High-Treason, the Estate Tail is barred, and the Land forfeited: But this Attainder was no Barre at the Common Law, nor when *Littleton* wrote. 26 H.8.c.13. 33 H.8.c.20.

36. If Tenant in Tail levy a Fine, with Proclamations, according to the Statute; this a Barre to the Estate Tail, but not to him in Reversion or Remainder, if he maketh his Claim, or pursueth his Action within five years after the Estate Tail spent: But the Law was otherwise when *Littleton* wrote. 4 H.7.c.24. *Coke* Com. *Lit.* l.3. sect. 708.

37. When *Littleton* wrote, if the Kings Donee in Tail, the Remainder in the King, had suffered a Common Recovery, the Estate Tail had been barred, but not the Reversion or Remainder in the King; and if such Donee had levied a Fine, with Proclamations, after the Statute of the 4 *H.*7. this had barred the Estate Tail, although the Reversion were in the King: But since, by the Statute of the 34 *H.*8. a Common Recovery had against the Tenant in Tail of the Kings Gift, or such a Fine levied by him, (the Reversion continuing in the King) is no Barre to the Estate Tail, wherein the Law hath been changed since *Littleton* wrote. 4 H.7.c.24. 34 H.8.c.20. *Coke* Com. *Lit.* l.3. sect. 708.

38. By several Statutes made since *Littleton* wrote, the wife of a man attainted of Mispriſion of Treason, Murther, or Felony, is Dowable; which was not so favoured at the Common Law. 1 Ed.6.c.13. 5 Ed.6.c.11. 5 El.c.1. & 11. 18 El.c.1.

39. By the Statute of *Westm.*1. No Sheriff or Minister of the Kings, was to take any thing for execution of his Office, but what the King allowed to him; and it was so by the Common Law. But by Statutes afterwards (of which two are since *Littleton* wrote) Fees are allowed to be taken by such Officers. 23 H.6.c.10. 19 H.7.c.8. 29 El.c.

32 H.8.c 32. 40. By the Common Law, no Executor or Administrator of Tenants in Fee-simple or Fee-tail, had any means to recover Arrerages of Rents and Services due in the life-time of such Tenant. Now the Law is altered, and such Executors and Administrators are by Statute enabled to sue for, and recover the same.

27 H.8.c.10. *Coke* Com. *Lit.* l.3.c.5. sect. 384. 41. By the Statute of 27 *H.*8. If a man seised in Fee-Covenant, upon good Consideration, to stand seised to himself for life, and to the use of his eldest Son in Tail, with the Remainder to his second Son in Tail, with Remainders over, *&c.* and to this annex'd a Proviso, That it shall be lawful for the Covenanter, at any time during his life, to revoke any of those Uses: This is good in Law, the Proviso being coupled with an Use. But at Common Law, if a Feoffment or other Conveyance had been made with such Proviso, the Proviso had been repugnant, and void.

5 El.c.4. 11 El.c.11. 1 Jac.c.16. 1 Jac.c.17. 42. By the Common Law, all men were at liberty, and might use what Trades they would, without being bounden Apprentice: But by the Statute of the 5 *Eliz.* Chap. 4 the whole business of Servants and Apprentices is setled, and all men who use any Trade, Art, or Occupation, which was a Trade at the making of that Act, are bound to serve as Apprentices seven years; and in some cases by other Statutes, restraint is laid upon some Tradesmen, from keeping too many Servants; which is contrary to the Common Law.

8 El.c.8. 43. By the Common Law, no Costs were given to a Defendant; which was a great Oppression: but that is amended since *Littleton* wrote, by several Acts of Parliament; and now the Plaintiff shall pay Costs in almost all cases, in personal, real, and mixt Actions (unless upon Demurrers) and in Popular Actions, where the Informer discontinues, he shall pay Costs.

13 El.c.8. 21 Jac.c.17. 3 Car.c.4. 20 H.3.c.5. 3 H.7.c.5,6. 11 H.7.c.8. 44. The Law concerning Interest of Money since *Littleton* wrote, hath been altered several times by Acts of Parliament. By the Common Law, and some old Statutes, lending of Money for Usury (as it's called) was unlawful; and the one half forfeited so lent. Afterwards it was permitted to take ten in the Hundred for Loan or Interest, by the Statute

Statute 37 *H.*8. then the Statute of the 21 *Jac.* brought it to Eight in the Hundred; and now it's reduced to Six in the Hundred: which is a great alteration of the Common Law.

37 H.8. c. *Coke* l. 5. Rep. *Claytons* Caſe.

45. In the old Law-books, there are few or no Actions upon the Caſe for Words: now of late there is nothing more common: and this ſeems to be a great alteration ſince *Littleton* wrote. The pleadings are clean altered; they are ſaid to be brought into form in *Edw.*3. his time, but very ſhort, which are now grown exceſſive long; and that which was uſually diſputed by the Lawyers, ſeems now to be put into the pleadings in writing in many Caſes.

46. The Writ called, a *Clauſum fregit*, is a late Invention (I mean, to the purpoſe it's now uſed) ſerving inſtead of a *Latitat*, and is of very great uſe; inſomuch as it ſerves to expedite mens Suits; and ſaves them from abatements, and ſo from loſing their Suits, and enforcing them to begin again, in caſe where there wants good Inſtructions, or any thing miſtaken in the Original. This is a change of the Law ſince *Littleton* wrote, in point of Practice.

Upon this Writ the Plaintiff may declare in any Perſonall Action, as if the ſpecial matter had been in the Writ.

47. By the Common Law, a Noble-man could not be Arreſted, nor his perſon impriſoned upon Meſne Proceſs in any Perſonal Action; neither could a *Subpœna* be made forth againſt him. In the firſt Caſe, there was onely (*a*) a Summons, and thereupon a Diſtreſs; and ſo Iſſues returned, untill the Defendant appeared: and in the later Caſe, the Lords Commiſſioners, then Lord Keeper or Lord Chancellor, uſe to write his or their Letters to ſuch Noble-man, to give him notice of the Suit, deſiring him to appear and Anſwer. Now, Noble-men are uſed as others are; Their Priviledge of Peerage being not allowed to them. This is an Alteration of the Law in point of Practice.

M.F. *ordered to pay* 5 l. *for ſerving an honorable perſon with a* Subpœna, *about Eaſter-Term*, 1634.

(a) *Cowel* Inſt. Jur. Angl. l. 4. Tit. 2. ſect. 5. p. 291.

Now upon Conſideration of all this, it's evident, That *Littleton*, and the Common Law, hath been altered in ſo many particulars, which are not things trivial, but points moſt material, and of general Concernment to all ſorts of People; and eſpecially, there being as I take it) very few Particulars enumerated, but what appear by Sir *Edward*

ward Coke his own Writing (to which I moſt confine my ſelf) to have been altered and changed as aforeſaid: beſides many more Alterations of the Common Law, which have been made in ſome things of High Concernment, as appertaining to Religion; and other things more Trivial, and of leſs Concernment, and yet worthy to be taken notice of; but here omitted, as being beſides the Scope of the Matter in hand, becauſe *Littleton* hath written nothing of the ſame. And although I have referred all theſe Alterations to Fourty ſeven particular Heads; yet upon peruſal thereof, the Reader may finde in ſome one of thoſe Heads, many Particulars comprehended; and very few of them mentioned, but contain more then one Particular. I ſay, That every man who will but obſerve what is here ſet down, will agree with me, That *Littleton* hath been altered in more then an hundred Particulars; beſides what Alterations are made in other parts of the Common Law, of which *Littleton* hath not written: And therefore, That ſure *Littleton*, or the Common Law, was not ſo Perfect and Compleat, nor ſo Profitable to the People, as the world hath judged it to be; it having had need of ſo many Alterations and Amendments.

CHAP.

CHAP. IX.

That there ought not to be a Court of Law or Justice, and another of Equity (such as now are in England) *maintained or suffered in any Nation professing the Gospel.*

THis Position is so clear, that the contrary hath no manner of Foundation of Truth, either in the Law of Nature, Right Reason, or the Word of God: For that Justice is but one, as Truth is but one, and simply one; and Justice and Injustice are opposites. I speak of distributive Justice, not of Essential Justice in God; from whom some Arguments might be brought, to confirm the point in hand; but that appertains to another Consideration: nor have I here to do with Commutative Justice, concerning the various management of Affairs in Commerce between man and man, for rectifying the Abuses, Frauds, Oppressions, Wrongs, and other Enormities therein: It pleased Almighty God to set up this Light, and to Ordain Powers and Authorities to distribute (*a*) Justice and Equity amongst men, for the upholding of Society, Political and Oeconomical, and the preserving of Sobriety and Temperance, and for encouragement of men in well-doing. (*b*) Nature holds forth but one Light to men, and God gives but one Law to Christians. This is the end of Magistracy, The Execution of Justice: which in their hands, whether Supreme or Subordinate, is that Vertue which is commonly called, Distributive Justice, and comprehends in it (*c*) Equity; and the same likewise is called Righteousness. Now that Justice and Equity are the same thing, there is nothing

(a) *No Act of Parliament either printed or not printed, in former or later times, gives the L. Chancellor power to hold any Court of Equity,* Coke Inst. 2 part. Art. super Chart. p. 553. *All Courts of Law at* Westminster *said to be Courts of Equity in the time of* Ed. 3. *Coke* Instit. 2 part. Art. super Chart. p. 592.

(b) *Cook.* Essay, p. 139. *The Law of the 12 Tables, is said to be the end of Law and Equity,* Tac. 1. Annal. l. 3 c. 5. p. 71.

(c) *Equity is the Law of Nature, to which all men are bound. That is honest, which is agreeable to the Equity of Nature,* Bod. Rep. l. 1. p. 95.

nothing more clear: as *Æquum & Juſtum*, are *Termini convertibiles*; ſo are Juſtice and Equity. (*d*) And theſe are indifferently taken one for the other in the Holy Scriptures, *Iſa.*59.14. *Juſtice ſtandeth afar off, and Equity cannot enter:* By theſe two words, is elegantly ſet forth the Injuſtice of the Magiſtrates, who had to do in execution of Juſtice and Judgement, as is there expreſſed. The ſame appears in that place of the *Proverbs*, *To puniſh the juſt is not good, nor to ſtrike Princes for Equity:* It is an evil and wicked thing to puniſh men for doing that which is juſt, or to abuſe Magiſtrates for executing Juſtice. *Coloſſ.* 4.1. *Maſters, give unto your Servants that which is juſt and equal:* The two words there uſed, are δίκαιον and ἰσότητα, which are indifferently taken one for the other, and either of them ſignifie *juſt* or *equal*, *Phil.*1.7. καθὼς ἐστὶ δίκαιον. *Arias Montanus* tranſlates it, *Sicut eſt juſtum.* (*e*) *Paſor* in his *Lexicon* renders it, *Prout —— æquitas poſtulat.* 2 Cor.8.14. ὅπως γένηται ἰσότης; this is Engliſhed, *That there may be equality.* The ſame word, ἰσότης, is tranſlated by the (*f*) Learned, *Æqualitas, æquitas, juſtitia*; and ſo it's indifferently uſed for either Equity or Juſtice, which are the ſame thing, being referred to the act of the Magiſtrate in diſtribution of Law or Right: (*g*) And Almighty God is ſaid to *Judge the World with Righteouſneſs, and the People with Equity.* The like appeareth in many other Texts of Scripture. And in the ſame ſenſe theſe words, *Juſtice* and *Equity*, are indifferently uſed by Profane Authors, to ſignifie the ſame thing; and they are onely diſtinguiſhed thus: (h) *Æquitas eſt ratio Legis, Jus vero ſententia ipſa*; ſo that Equity and Right are not adminiſtred as ſeveral things (*i*), but the one is in the minde of the Judge, the other more perſpicuous; and both made up the act of Juſtice. And the ſame Author chargeth it as a fault, that *Uſu ſæpè venit, ut inter ſe pugnent Jus & Æquitas.* In this ſenſe the Lawyers themſelves have uſed *Lex* for *Jus* and *Æquitas*, or the one for the other: (k) *Lex dicitur* νόμος ἀπὸ τῆς νεμεῖν, *à diſtribuendo quæ ceo diſtribute droit a Cheſc'*: Becauſe it gives Right

(*d*) *Weems.* M. L. Com. 8. Exerc. 8. p. 225, 230. *Godw.* Antiq. Rom. l. 3. ſect. 4. c. 1. Iſa. 59. 13, 14, 15 Prov. 17. 26.

Col. 4. 1.

Phil. 1. 7.

(*e*) *Paſor* Lex. p. 187. 2. 2 Cor. 8. 14.

(*f*) *Paſor* Lex. p. 343. 2.

(*g*) Pſal. 98. 9. 1 John 3. 7.

(*h*) *Franc. Sylvii*, Com. Orat. Cicero, pro Murena, Tom. 1. p. 771.

(*i*) *The Law without Equity, is as the Body without the Soul. The leaſt Judges have power to judge and give ſentence according to the equity of the cauſe*, Bodin. Repub. l. 6. c. 6. p. 763, 764.

(*k*) Νομοδεσία, *Finch*, c. 1. f. 1. Conſuet. Norm. tit. de Jure, fo. 125. & tit. de Juſtit. eod. Cuſt. Norm. tit. *Juſtice*, pag. 7. B. *Ariſt.* Eth. l. 5. c. 41.

Right to every one: The very ſame words are uſed in oppoſition of that Law of the *Romans*, called, *Lex* (l) *Agraria*, where the *Commentator* in his *Scholia's* upon *Cicero*'s Oration againſt that Law, ſaith, *Lex ſuum cuique tribuit*; and thence reaſons, and concludes Logically thus: *Maj.* The Law gives to every one Right: *Min.* This Law doth not give to every one Right: *Concl. Ergo, hæc Lex Juſtitia non eſt.* Let our Law and Equity be laid to this Rule, and ſee how any man living can defend both.

(l) *Rubul. Din.* Scho. in Orat. Cicer. de Lege Agraria. tom. 1. p. 710. *This Law was for Diviſion of Lands amongſt the poor Commons, being found in the poſſeſſion of private perſons,* Tit. Liv. l. 2. p. 71. c.

A poor man, for Example, is bounden in a Bond of Twenty pounds; conditioned for payment of Ten pounds, with Intereſt: which Bond is forfeited, becauſe the Money was not paid at the day, although it was paid two or three years after, and nothing unpaid but Intereſt: The Creditor puts this Bond in Suit, it may be either out of meer covetouſneſs, or to hook in ſome other pretended Debt or Duty: The Defendant pleads Condition performed; or upon the general Iſſue, gives in Evidence the payment of the Principal three years after the day limited in the Condition. The Judge, in ſuch caſe, muſt give direction for Law, That the Jury muſt finde for the Plaintiff; for that the Defendant (*m*) muſt have his Remedy *in* Equity: and accordingly, a Verdict is given for the Plaintiff. And the Defendant preferreth his Bill into the Chancery; and therein alledgeth all that is true, and ſomewhat more, to make his Bill hold: and if the Plaintiff at Law get Judgement entred, before the Bill come in, (which may be had the firſt week in the next Term after the Tryal) there is an end of the Suit; the poor man hath had Juſtice, *Summum Jus*, that is, the extremity of the Law, which is *Summa Injuria*; and his Adverſary hath Execution againſt him for the Twenty pounds Penalty, and Eight pounds for Coſts, which is given in nature of damages: This the Defendant muſt pay, or lie in Goal; and the Law, as it is Juſtice (in conceit) cannot relieve him. Well, the poor man hath (it may be) got a Reprive, upon preferring his Bill; the Plaintiff at Law is either in Contempt, or prayes a *Dedimus Poteſtatem*, to anſwer in the Countrey; or it may be in his Anſwer, confeſſeth part of the Money paid, or elſe that the Bond is ancient. Hereupon, the Complainant in Chan-

(*m*) *Juſtitia legalis ſtrictè ſumpta, quatenus opponitur æquitati, eſt iniquitas*, &c. *Ameſii*, l. 5. de Conſcient. c. 2. p. 269. *Finis Legis eſt Juſtitia*, Card. Rhod. l. 18. c. 19. p. 697.

cery obtaineth an Injunction, and in ſhort goes to Commiſſion, and brings the Cauſe to Hearing, and hath a Decree, That the Plaintiff paying the Intereſt (which may be ſome thirty ſhillings) and Coſts (which may be five Marks) beſides the aforeſaid Eight pounds, the Defendant, who was Plaintiff at Law, ſhall acknowledge ſatisfaction of the Judgement, and deliver up the Bond. The Decree is inrolled, and the Defendant ſerved with a Writ of Execution of it, and obeys it: and this is the beſt that can be expected. And then the parties fall to caſt up their Accompts; and it's found, That the Plaintiff at Law ſpent Eight pounds, and the Defendant four pounds: The Plaintiff in Chancery ſpent Twenty pounds, and the Defendant Twenty Marks: Lay all this together, and in concluſion, the Debtor hath ſpent 24 *l.* and paid 11 *l.* 6 *s.* 8 *d.* and the Creditor hath ſpent 21 *l.* 6 *s.* 8 *d.* and received for his Debt and Coſts 11 *l.* 6 *s.* 8 *d.* So the Creditor loſeth his Debt, and Ten pounds out of his purſe; and the Debtor hath ſpent and paid 35 *l.* 6 *s.* 8 *d.* where the firſt Debt was but Ten pounds, and the Remainder was but thirty ſhillings. O famous Law and Equity! I could ſhew many of theſe Caſes: And indeed, this hath been the common practice with moſt Judges, to ſend men to Equity: and they ought to do ſo, whileſt the Law ſtands as it doth. Now apply this to the Rule and Argument above-mentioned: The Law could not relieve the Debtor, but Equity doth relieve him; Which of theſe two hath done him Right? The Law did him none; for if it had done him Right, then the Chancery ought not to have done the contrary; which it hath done: for, to charge a man, and to diſcharge him, are clean contrary. And the Chancery hath not relieved him; for in effect, he hath paid and ſpent more then treble the principal Debt and Intereſt: So upon the point, he is relieved no-where: And yet every man will ſay, He is no juſt man, who refuſeth to deliver up a Bond when it's fully paid. How doth this Law (put all together) give every man Right? and if it do not, then is it an unjuſt Law. I do confidently affirm, That no Nation profeſſing the Goſpel, ought to have or maintain any Law ſo ſevere or rigid, that it needs any Court of Equity to moderate it. If it were needful or convenient in any caſe, to have relief

lief in Equity, it muſt needs be in caſe of Life and Death, which is a buſineſs of higher Concernment then a little Money, and more favoured in Law. But no man ever heard of a Bill preferred into any Court of Equity, to ſave one from the Gallows; and therefore it is to be preſumed, there is no need of any ſuch Court, if the Law were Juſt and Equal.

But becauſe it may be every man will not be ſatisfied, that in the Caſe above-mentioned, there was a direct Repugnancy in the Judgements of theſe two Courts; becauſe, The Chancery did give relief *in Tanto*, though not *in Toto*: I'll onely put one ſhort Caſe more, to put the matter out of queſtion.

A man indebted upon a ſingle Bill, payes the Money upon the day in the Bill appointed, and hath Witneſs of the payment; but the Bill cannot be found: This Bill comes after to be put in Suit; the Defendant cannot be admitted to plead payment at the day, nor hath he any other Plea ſufficient in Law to diſcharge himſelf; nor can be relieved at Law, unleſs he have a Releaſe, although he prove the Debt paid; but Judgement muſt needs paſs againſt him, either by Default, or Confeſſion, or upon a Verdict, after Iſſue joyned upon ſome falſe Plea, which the Defendant thinks moſt eaſie, and after which he ſhall have moſt colour of Equity. Well, Judgement is paſſed, and the Defendant muſt expect Execution, without relief at Law. But for fear of the worſt, the Defendant hath before Judgement his Bill preferred into the Chancery, to which the Defendant, Plaintiff at Law, anſwereth, and the Cauſe comes to hearing; where it appears, the Debt to be paid: thereupon, the Court decrees the Bill to be delivered up. Here is a juſt Contradiction, and diametrical Oppoſition: The Law condemns the Debtor, or at leaſt will not relieve him; and the Chancery doth diſcharge him of the debt, and ſo relieves him. Upon this conſideration, ſome honeſt Judges of late dayes, have uſed in ſome Caſes, to order the Plaintiff (upon the Defendants payment of the principal Debt, with Intereſt, and Coſts, or what ſhall appear to be unpaid) to deliver up the Specialty, and diſcontinue the Suit, or ſtay the ſame. This is a ſhort and equal way (which is

Juſtice, and no more) to give every one his Right, according to that of the wiſe Heathen, (n) *Nihil præter æquum faciendum eſſe*, &c. *Juſtitiam ſemper oportet eſſe Clementiam temperatam:* Yet this is contrary to the Law, and no Record is made of any ſuch Judgement. But other Judges have uſually ſaid in ſuch Caſes, The Defendant muſt ſeek relief in Equity; they muſt do Juſtice, that is, ſhew Extremity.

(n) *Plutarch* in Laco. Apoph. *Stob.* ſer. 7. Ex Ageſil.

Theſe two Courts can no more conſiſt with Juſtice, then two Weights or Meaſures of different bigneſs or length. I uſe this familiar Compariſon, becauſe it pleaſeth the Holy Ghoſt to make uſe thereof to this very purpoſe, *Prov.* 20.10. *Diverſe weights and diverſe meaſures, are both alike abomination to the Lord.* Theſe words, *Diverſe weights and diverſe meaſures*, (o) word for word out of the Original, are, a ſtone and a ſtone, that is, different Weights and Meaſures, of ſeveral ſizes, one bigger, another leſs: and this is expounded by that in *Deut.* 25. 13, 14. *Thou ſhalt not have in thy bagge diverſe Weights, a great and a ſmall: Thou ſhalt not have in thy houſe diverſe Meaſures, a great and a ſmall.* Theſe words by a *Synecdoche ſpeciei*, forbid all unjuſt and unequal dealing and commerce amongſt men, and all Injuſtice and Iniquity, and the inſtruments, tools, and means thereof: and implicitely, the ſame Law commands, all Juſtice and Equity; and directly forbids two Courts, having contrary Powers and Juriſdictions, and executing things Repugnant and contrary one to another: If the one proceed juſtly, the other muſt needs be unjuſt. Neither do the Scriptures any-where mention Juſtice and Equity as two ſeveral things, to be diſtributed in one Caſe; as if that might be done by the one, which might not be done by the other; nor that ever any good Judges gave any ſuch Judgments: but rather, when they are ſaid to do Juſtice, it's intended, That they did juſtly and equally. It's true, that the (p) Judicial Laws are called *Judgements*, and the execution of the Moral Law, is called *Juſtice*. And ſo (q) *David* is ſaid, *to execute Judgement and Juſtice*; that is, to judge juſtly and righteouſly, both in reſpect of the Moral and Judicial Laws.

Prov. 20.10.

(o) D. *J. Burgis* in hunc loc.

Deut. 25.13, 14.

Note, The difference between L. Chancellor Egerton, *and L. chief Juſtice* Coke, *about the Power of the Chancery after a Judgement at Law*, Wilſon *Hiſt. Great Britain*, pag. 95.

Bodinus *the learned Civilian obſerves, That Contention between great Magiſtrates or Courts, about their Power or Juriſdiction, is always hurtful to the poor Subjects*, Bodin. Repub. l. 3. c. 6. p. 356.

(p) Exod. 21.1

(q) 2 Sam. 8.15

Laws. As for the Ceremonial Law, that was not properly belonging to diſtributive Juſtice, but concerned every particular man, as the immediate ſervice of God.

To conclude this point; If the Law were juſt and equal, as it ought to be, there were no need of any Court of Equity: And the Law, as now it is, having need of ſuch Courts of Equity as theſe are, is an Oppreſſion of the People, and ſo clearly againſt the (*r*) Law of God.

(*r*) Iſa. 10. 1.

The Court of Wards, was a Court mixt of Law and Equity; and there, he that was but a Termer or (*s*) Tenant of Lands, holden *in Capite* or *Knights-Service*, for any long time, as 100 years or above, was adjudged in the Kings Caſe to dye ſeiſed, becauſe that he had the Land, and the Reverſion was worth little or nothing. And theſe long Leaſes were made to defraud the Lord of his Wards. So if a mans Lands were in the hands of Truſtees at the time of his death, they decreed the Land to deſcend to his Heir, as to ſome purpoſes.

(*s*) *Sewals caſe Court Wards*, Carol. 7.

The Court of Exchequer is likewiſe a mixt Court, inſomuch, that if a mans Land were extended for Debt due to the King, or a Judgement againſt him upon a Recognizance, the Court might, and uſually did moderate the rigour, by inſtalling the Debt; and ſometimes diſcharged it, upon matter pleaded: And this is agreeable to Law, that ſuch Debts ſhould not be levied to the great grievance of the Subject. Here Equity and Law are brought together; which I remember, not to commend the Court of Wards (which was a heavy Burthen, nor yet the Exchequer in every thing) but to ſhew, That Law and Equity have been, and may be both diſpenſed in one Court, as is herein before ſet forth. And what hath been ſaid upon the Bench by the (*t*) Lord Keeper or Lord Chancellor, in my hearing; *viz. That the Lord Chancellor in that Court, was truſted with the Kings Conſcience; but he could not delegate it to another*; as if the King, in reſpect of his Soveraignty, had power to diſpenſe with the Law (which the Judges might not do without delegacy from him (*u*). This is an unreaſonable Conceit, to think that any Authority or Power on Earth, can give

(*t*) *Sir* John Smith *L. Keeper his Speech in Chancery.*

(*u*) *The Judge as well as the Prince may judge according to conſcience; and what is right in the one, is right in the other; and that which is wrong in one, why ſhould it not be wrong in the other? It's lawful for no man in judgement to ſwerve from Equity and Conſcience*, Bod. Rep. lib. 6. cap. 6. pag. 768.

any

any liberty to ſwerve from the Rule of Gods Word and Right Reaſon: It were to put that upon the Supreme Magiſtrate, as was ſaid of one of the Popes, That he was *Nec homo, nec Deus, ſed inter utrumq;*. And ſo much in generall of this matter.

CHAP. X.

That all ſuch caſes as chiefly require a remedy in a Court of Equity, may eaſily be determined by the Judges in Courts of Law, if the Law were amended as it ought to be: And herein, that which is uſually ſaid for the upholding of Courts of Equity, is anſwered.

THat which in the former Chapter is ſaid, concerning a Debtor having relief onely in Equity, againſt the Penalty of a Bond, or in an Action brought upon a ſingle Bill, which is paid (being things moſt common in every mans practice) I have therein ſufficiently anſwered, and cleared it, That the Judges of Law might eaſily determine all ſuch Cauſes without a Court of Equity, by ordering the Plaintiff to take and accept what is due upon the Bond, or any Specialty wherein there is a Penalty; and by admitting the Defendant to plead payment at the day to a ſingle Bill. And where Money is not paid at the day, to allow Damages for the time, according to the Plaintiffs loſs: So joyning Law and Equity together, to make up perfect Juſtice; and that is all which needs in ſuch caſes.

The Court of Chancery was anciently Officina Juſtitiæ, *and the Lord Chancellor uſed to ſit as Chief Juſtice of the Common Pleas; and no mention made of a Court of Equity, until the Reign of* H 6. and Ed. 4. *Coke* Inſt. 2 part. p. 552

Thoſe things which are moſt ſtood upon, for upholding of theſe two Courts, or Diſtinct Powers and Juriſdictions, are ſuch as theſe following.

Object. 1. Firſt, it's ſaid, That in caſes of Mortgages forfeited,

feited, there is no remedy at the Common Law, (*a*) but the Mortgager must lose his Land, for how little soever it be Mortgaged, without any relief elsewhere, but in Equity: And therefore this being a matter of great Concernment, ought to be remedied in a Court of Equity.

(a) *This is against Gods Law, and the Law of Charity,* 1 Cor. 6. 8, 9. 1 Thess 4. 6. Matth. 7. 12. Luk. 6. 31.

Answ. 1. If it be remembred what is said before concerning Bonds, and other Specialties with Penalties, that partly answereth this Objection: for in an Action of Trespass and Ejectment, if the Defendant might have liberty upon the general Issue pleaded, to give in Evidence what the original Debt was, for which the Lands were Mortgaged, and what Profits have been taken by the Mortgagees; the Debt and Damages for the Money may suddenly be computed or found by a Jury. And if the Judges in such case, as in case of a forfeited Bond, enforce the Mortgagee (or his Heir, in case he bring the Action) to accept the same principal Debt and Damages, with reasonable Costs (if he did not formerly refuse it) without more ado, and release or assign the Mortgage; which might be easily done, with a little Amendment of the Law: What use were there of a Court of Equity?

Obj. 2. The like may be said concerning Covenants or Conditions broken in other cases: where a man Covenants to pay Rent or make repairs, or hath an Estate with a Proviso, or subject to a Condition of Re-entry for non-payment of Money; (*b*) and for performance of Covenants, enters into a Bond of a great Penalty; or shall lose some considerable Estate, for some petty neglect, or non-payment of some some small sum of Money (as I have known a Lease worth Five hundred pounds at least, lost for non-payment of Five pounds.)

(b) *This extremity of rigour is the worst Oppression in the Commonwealth & a transgression of Gods Law,* Isa. 58. 6. Ezek. 18. 7. Eccles. 5. 8. 1 Sam. 12. 3.

Answ. In these cases, the course above-mentioned is a sufficient Remedy to finde out the Damage sustained by the non-performance of the Covenant: which may be as well done, with a little Alteration, in an Action of Debt upon the Bond, as upon an Action of Covenant, which is ordinarily in use; and in case of a Condition broken, to ascertain the Damages, and appoint the Plaintiff to accept thereof, as aforesaid.

Obj.

This is remedied partly by the late Ordinance for Regulation of the Chancery, Rom.13.7.

*Obj.*4. Legacies cannot be Sued for at Law, and therefore of Neceſſity there needs a Court of Equity. This ought to be amended, that every one may have their due.

Anſ. This Caſe grows remedileſs, partly by the diſſolution of the Biſhops or Eccleſiaſtical Courts (as they are called) and may eaſily be remedied, if the Law were a little altered: For what reaſon can be given, that an Action of Debt may not as well lie for a Legacy, as for any other Duty payable as Executor or Adminiſtrator? It's true, that at the Common Law, generally mens Perſonal Eſtates were at the mercy of the Biſhops or Prieſts, to diſpoſe the ſame for the health and ſalvation of mens Souls, as was pretended: but now we are freed from that thraldome, it were fit, that every mans Eſtate ſhould perform his Will, according to the Executors Oath, by paying Legacies (as well as Debts) in the ſecond place, as far as the Teſtators Eſtate will extend; and that an Action of Debt lay for it as aforeſaid: for that if a man ſue in Equity for a Legacy of Twenty pounds, or under, he ſhall ſpend it every peny in Suit, if he have not a very eaſie Adverſary.

(c) Neh.5. 11, 12, 13. 2 Cor. 8. 11, 12. *All honeſt Agreements where the party is not deceived, are to be performed, being in our power,* Amef.l.5.de Conſc.

Obj. 4. The greateſt queſtions are about performances of (c) Covenants and Agreements, and of Truſts: Concerning which, it's truly ſaid of the firſt, That for breach of Covenants or Agreements, a man may in an Action of Covenant recover Damages for the Covenant broken; but there is no meanes at Law to enforce any man to perform his Covenant: and therefore there is need of a Court of Equity.

Anſ. This is a fault in the Law, that a man can have no means to enforce one to perform his Covenant: But this might eaſily be amended, either by putting the Covenant in Iſſue upon a Traverſe, or by deviſing an Iſſue, as is uſually done by Order of the Chancery; and if it be found, that the Defendant Covenanted or Agreed under his Hand and Seal, as the Plaintiff alledgeth, Why might not the Judgement be, That the Defendant ſhall perform his Agreement, and pay Damages, *&c.* as well as in a *Replevin*, that the Cattel ſhall be returned, *&c.* or in an Action of Debt, that a man

man shall pay Money, or render Corn, or the like.

And touching Agreements made under mens Hands, they amount but to (d) Promises: upon which, at Law, the Plaintiff may recover Damages: but there is neither Law nor Equity to enforce a man to perform such an Agreement; which, I conceive, ought to be amended in the Law; for that sometimes such Agreements are made upon as valuable Considerations, and as solemnly, as those which are put under mens Hands and Seals.

(d) *Josh.* 9. 21. *compared with* 2 Sam. 21. 1, 5 *Just promises are to be performed, and the contrary punished by the Magistrate, &c.*

Obj. 5. And concerning Trusts, especially concerning Lands and Tenements, the Common Law can afford no help against such as refuse to perform the Trusts. If a man be indebted, but not upon Record, as Statutes or Judgements, *&c.* or in consideration of Marriage, conveyeth his Lands to some friends, and their Heirs, upon Trust and Confidence (either expressed or implied) that the Trustees, *&c.* shall permit the Grantor, and the Heirs of his body, or his Wife or Children, to take the Profits, (e) The Trustees (having a minde to chuse him that haply intended to cozen others) refuse to let *cesty que use*, the parties for whom they are trusted to take the profits, *&c.* The Grantor hath no remedy at Law, but must sue in a Court of Equity.

(e) *It is true of Trusts, as of Uses; Fear & Fraud were the Inventers of them. Fear, in time of Civil wars, to save Inheritances from forfeiture: Fraud, to defeat lawful Actions, due Debts,* &c. *Coke l.* 1. Chudleys *Case, fol.* 121. a, b. *The Judicial Law directs a remedy in case of trusts,* Exod. 22. 10, 11.

Answ. This is true, as things now stand: but this might and ought to be amended, by putting *cesty que trust* into the condition of *Cesty que use*; and let the possession be transferred to the trust, and then the Grantor and his Heirs and Assignes may recover the possession and profits without the help of a Court of Equity. And it might be wished that all such Trusts might be destroyed; serving generally for little else but to deceive Creditors and Purchasers. See a Case recited by *Charles George Cock, Essay* p. 123.

Object. 6. The last and main thing for upholding these Courts of Equity, is, That commonly Frauds and Deceipts can never be discovered, nor Private Contracts proved, but by the Defendants Oaths; which are not elsewhere to be taken in such cases: and this enforceth so many Bills of Discovery to be exhibited into those Courts every Term.

Answ. This Objection doth in it self, in *foro Conscientiæ*, clearly overthrow the practice of these Courts. For the very ex-

exacting this Oath is (*f*) againſt the Law of Nature, whoſe dictates are the ſame with thoſe of the Law of God written; from which are derived undenyable Maximes and Principles, whereof this is one: *Nemo tenetur accuſare ſeipſum*: This Maxime is agreed by all men; and the Lawyers allow it. The reaſon of it is, (although it need none to confirm it; for it is alſo a Maxime, *Contra Negantem Principia non eſt diſputandum*) becauſe every man is neareſt to himſelf; and it's againſt Nature, for him to be a means of his own puniſhment: a man ought to preſerve himſelf, although to the hurt of another: it were better to kill another, then to kill himſelf, or to ſuffer himſelf to be killed; if of neceſſity the one muſt needs be. Therefore, to exact this Inquiſitory Oath againſt a mans own ſelf, is againſt the Law of Nature, and ſo againſt the Law of God. This is the very ſame Oath which was brought into *England* by Pope *Martin* the fifth, for extirpation of the followers of *John Wickliff*, called *Lollards*, about the Reign of King *Hen.* 4. and was taken up by the Eccleſiaſtical Courts (as they were called) I ſuppoſe, long before it was uſed in any Engliſh Court; and afterwards, it was moſt famouſly uſed in the Star-Chamber, and in the High-Commiſſion, called The Oath *Ex Officio*; the Defendants being, beſides their anſwer, examined upon Interrogatories; as ſometimes they are in other Courts. And it's reported, (which I had from good hands) that one Mr. *Fuller* of *Grays Inne* having this Oath tendered to him, (as all Non-conformiſts had, who came into the High-Commiſſion) refuſed to take it, ſaying, he was not bounden to accuſe himſelf; but ſaid, he would ſwear, and anſwer upon his Oath to what they ſhould ask him, ſo far as he was bounden by Law. He was anſwered, There was no more deſired of him. Thereupon, the honeſt Gentleman (although a Lawyer) was deluded and cozened with this word *Law*; which was equivocal, either referring to the Common Law, or to their Popiſh Tyrannical Canon or Eccleſiaſtical Law: and taking his Oath, had Queſtions demanded of him, of things which intrenched upon his Eſtate and Liberty, (for which he might be fined and impriſoned) if not his life. To theſe he anſwered, That he was not bounden by Law to anſwer to them, being againſt himſelf; according to that

(*f*) Ameſ. l. 4. *de Conſc.* c. 22. f. 222. *This queſtion about exacting Oaths againſt a mans ſelf, is handled, and the Objections and the Scriptures anſwered, which ſeem to countenance the ſame. See the Book called* A Treatiſe of Oaths, *written by the Nonconformiſts* p. 13, 15, 52, 57.

that Rule of Right Reason above mentioned: *No man is bound to accuse himself.* This they declared Perjury; and for that they fined him 300 *l.* What difference is there between these proceedings, and the proceedings in Courts of Equity, especially when Answers are made to Exceptions, or when the party is examined upon Interrogatories against himself? The best that can be made of it, is, That it is a profaning the holy Name of God, and the abuse of an Oath; as being here, not (*g*) *the end*, but the beginning, or rather occasion of strife: and if this Oath were taken away, men would be sure to have Witnesses present to all their Contracts and Agreements. And it may be observed, that there is no manner of credit given to the Defendants Answer: for the Practisers in Chancery use to say, *It's no matter if the Defendant swear the Crow is white, if the Plaintiff can prove she is black.* And upon this ground all wise men proceed, in reference to Suits in Courts of Equity; not to prefer their Bill, unless they can prove it, or at least the material points thereof. I have observed, That in almost thirty years practice, I never found one Defendant, who wanted conscience to pay a just Debt, (where it could not be proved by Witnesses) that would ever confess it in an Answer upon his Oath; but rather use the help of some skilful man, to draw his Answer so equivocal, or cautelously, that it might not prejudice his Cause. This hath been, and is a heavie temptation and provocation to Perjury, and so a breach of the Law of God: which causeth the Land to mourn, and therefore ought to be abolished.

(g) Heb. 6. 16.

Object. 7. And where it is alleadged, That although in Criminal Causes, which are popular, men are not bounden to accuse themselves; (*h*) yet for discovery of Fraud and Deceit in Cases Personal, they are bounden by Law to declare the truth upon their Oaths in their Answers:

(h) *This is the abuse of an Oath, as before is proved, Heb. 6. 16. and is a sin against the Law of Nature, no man being bounden to accuse himself.*

Answ. It may be answered, first, That all Frauds and Deceipts are things criminal *in foro Conscientiæ*, and for which in most Cases a man may be indicted at Common Law; and, in some Cases, by vertue of several Statutes; as, for fraudulent Conveyances, and for some deceipts in Bargaining, and for cozenage in selling of Wares, and in many other Cases. And if a man in any case were to be enforced to confess the truth

againſt himſelf, there is moſt reaſon it ſhould be done in Criminal Cauſes moſt capital; as, when Treaſon, Adultery, Murder, or ſome great Felony is committed, and ſeveral men accuſed, Were it not a fair pretence, that every man, to clear himſelf, and to the end to finde out the Truth, ſhould be examined upon his Oath? And yet this is not allowed in the Law, nor ought to be done, for the reaſon aforeſaid; unleſs the Defendant will (*i*) voluntarily offer his Oath: which may be admitted by the Law of God, otherwiſe *Joſhua* (*k*) would not have done it in the caſe of *Achan*: although he exhorted him to confeſs the truth, and give glory to God; yet he did not enforce him to ſwear, but ſearched his tent for the wedge of gold and the *Babyloniſh* garment: neither did our Lord Jeſus Chriſt urge the woman taken in adultery to accuſe her ſelf, but asked where her accuſers were; and when he ſaw that no witneſſes accuſed her, he ſaid, No more do I; and bid her go her ways, and ſin no more.

(*i*) Exo. 22. 11

(*k*) Joſh. 7. 19, 22.

Joh. 8. 10, 11.

Now in thoſe Caſes which are not criminal, as about Truſts, and Eſtates in Land in Extent, and ſuch-like, which may uſually be proved by Witneſſes, where men are forced to anſwer upon Oath; theſe do many times intrench more upon mens Liberty and Eſtates, in reſpect of the conſequence, then an hundred trivial Frauds or Thefts: and therefore this will not warrant their anſwering upon Oath. All the Arguments which have been brought againſt the Oath *Ex Officio*, (if I miſtake not) make directly againſt this Oath: And it is no more lawful then that Popiſh Oath (with Compurgators) which was uſed to be adminiſtred in the Spiritual, or rather Bawdy Courts, to purge men of Incontinencie or Fornication. And this is all which I ſhall ſay in this place, of theſe Courts of Equity.

CHAP.

CHAP. XI.

That the Theory of the Common Law, and some of the Statutes now in force, contain matters repugnant to the Law of God.

TRrial by (a) Combate, in an Appeal of Death, or a Writ of Right, when men by themselves or their Champions decide matters in controversie by the death one of another, in a Duel: This is a wicked Law taken from the Heathen *Lombards* and *Saxons*, and directly against the Word of God, *Num.*35.16,17,18. *Matth.*19.18. *Cock* Essay, p.178. *Rotaris*, one of the Kings of the *Lombards*, had taken away this Law, protesting that it was inhumane and naught. *Lewis* 9. King of *France*, is commended for this Edict: *Nous defendons battailles par tout en nostre Domaine, en toutes querelles*: i. e. *We forbid Combats in all Quarrels, thorowout all our Dominions.*

2. (b) The Combatants and Champions Oaths in an Appeal of Death or other Felony, or in a Writ of Right, is likewise a profaning of the Name of God, an abuse of an Oath, (which is a part of Gods Worship) and a Bond of Iniquity. *Jer.*4.2. *Act.*23.21. *Heb.*6.16.

3. (c) The Law concerning Man-slaughter, at the Common Law, when a man killeth another wilfully, (being done suddenly, or in hot blood) he shall not suffer death, if he can reade: This is likewise against the Law of God, *Numb.* 35.33. *Lev.*24.21. *Gen.*9.5,6. *Rev.*13.10. (d) To prevent Man-slaughter, some wise States have prohibited the wearing of Weapons in time of Peace, for that armed men are more insolent and ready to kill, then other men disarmed.

4. (e) That a mans life should be in danger for any Theft, or trivial Felony, above the value of Twelvepence, is a Law against the Law of God, who hath ordained Restitution and other Compensations as the Case shall be, (where things stollen

(a) Plow. *Com.* *fol.*366. B. & 261 B. *Assize* 1 Ed.3. *f.*1. Coke *l.*8. *f.*46 & *l.*9. *f.*31 Rast. *Entr. Ap. Mort. f.*50. B & *Droit. f.*223. A. *Cust. Norm. tit. Suit or Murdre, f.*70,71. Cow. *Instit. Index Expost. lit.* P.

(b) *Myr. Just. c.*3. *S.*24,25. Dyer, *f.*301. *n.* 41,42. *Westm.* 1. *c.*40. Stamf. *pl. Coro. l.*3. *c.*14

(c) Cowel *Inst. l.*4. *T.*18. *S.*17. *p.*324. *Westm.* 1. *c.*2. *Stamf. pl. Coro l.*1. *c.*9. *Ant. Cler.* 9E.2 *c.*16.

(d) Bod. *Rep. l.*4. *c.*7. *p.*542.

(e) *Doct. & St. c.*8. *fol.*17. B. Fitz. *Coro.*404. & 415. Poult. *pax Reg. & Regni*, Larceny, *f.*129. A.

18 Eliz. c. 4. *The Romanes judged it a notable example of publike clemencie, to ſpare life, where other puniſhments are ſufficient.* Tac. *Annal. l.* 14. c. 13. p. 215.

ſtollen are living or dead.) It's a Rule without Exception, given by the Learned, That no humane Law can juſtly take away the life of a man for any offence, without a general or particular warrant from God's Word; becauſe mans life is onely at God's diſpoſing. *Willet* Hex. *in Exod.* 22. 1. *Qu.* 3. *Exod.* 22. 1, 3, 4. 2 *Sam.* 12. 6, 19. *Luke* 8. It may be obſerved, That where the Laws are moſt ſevere againſt Stealing, as amongſt the *Arabs*, there are moſt Thieves, through the juſt judgement of Almighty God.

(*f*) Poult. *pax Reg. & Regni*, Judgement, Treaſon, *f.* 244 6 El. Dyer, 230 Cowel *inter verb* Treaſon. Cowel *Inſtit. Jur. Angl. l.* 4. *Tit.* 18. *S.* 8. *p.* 317.

5. (*f*) The Judgement in Treaſon is a barbarous and inhumane Judgement, *viz.* That the Offender ſhall be drawn upon an Hurdle to the place of Execution, there to be hanged by the neck; then cut down alive, his Intrails and Privie Members cut from his body, and burned in his ſight; then his head ſtruck off, and his body divided into four quarters, *&c.* This is an act of Cruelty, and too much inſulting over a poor fellow-creature in miſery. No ſuch kinde of death was amongſt the Jews, Greeks, or Romanes: the neareſt, were thoſe Torments deviſed by the Heathens for the *Maccabees*, and thoſe uſed in the firſt Ten Perſecutions after Chriſts time; which were deviſed rather by devils incarnate, then men. All ſuch Cruelty is condemned, *Amos* 1. 3, 4, 5, 11, 12, 13, 14. & Chap. 2. 1. *Jer.* 6. 23. *Heb.* 12. 35, 36, 37. *Jam.* 2. 13.

Anciently amongſt the Romanes, theſe facts were Treaſon: 1. *Betraying the Army.* 2. *Stirring up the people to Rebellion.* 3. *Bad managing the affairs of the Commonwealth.* 4. *Impairing the Government and Majeſtie of the People of* Rome. Tacit. *Annal. l.* 1. *c.* 15. *p.* 29.

(*g*) Magna Chart. cap. 1. *Coke* 1 4. *f.* 46. a 9 Ed. 2. c. 16. 8 El. c. 4. 84 Eliz. 5. *Wingate* Law, *c.* 46. *p.* 85. *n.* 11, 12. *Cowel* Inſt. *l.* 4. *Ti.* 18. *ſect.* 17. *p.* 325.

6. (*g*) The uſe of Clergie, as it was at the Common Law, is a great offence; when he that could reade, was not ſubject to be tryed for Murther, and other great Offences; but being claimed by the Ordinary (for a Clerk) ſhould be taken from Judgement. This is ſaid to be the Priviledge of Holy Church, (*viz.* of *Rome*) which is the exalting of the Romiſh Antichriſtian Power, above the Law and Word of God, who hath appointed Magiſtracy for the puniſhment of evil-doers, without reſpect of perſons in Judgement, *Rom.* 13. 4. All the Statutes made in affirmance or alteration of the Common Law in this Point of Clergie, are unlawful; as to ſave life in caſe of Manſlaughter, if the Offender can reade;

or

or to take away life for Theft above Twelve pence; and in other cases where men ought not to suffer death, *Ezek.* 13. 19. *Jam.* 4. 12.

7. (*h*) The Oath of Abjuration of such as took Sanctuary, and then abjure the Realm; the same used of late times to acquit Sorcerers and Conjurers, and to punish such as offend against Forest-Laws: This is a horrible prophanation of the holy Name of God, and the abuse of an Oath, which is a part of Gods solemn Worship, *Exod.* 20. 7. *Heb.* 6. 16. *Jer.* 4. 2. The Heathen *Romans* appointed Sanctuaries, whither every lewd fellow escaping, if he could but lay hold on *Cæsars* Image, he was free both from Debts and Punishments. This was accounted a Grievance, and condemned by the Heathen Historian, *Tacit. Annal.* l. 3. c. p. 75. & c. 13. p. 83. & l. 4. c. 3. p. 94. & c. 10. p. 104.

(*h*) Custom Norm. tit. *Forfeitures*, f. 24. b. Exp. For. Laws *a Manusc.* f. 40. *Coke* Entr. p. 1. tit. *Abjuration*. *Stams.* Pl. Cor. l. 2. c. 39. f. 119, 120. 35 El. c. 1.

8. (*i*) The whole Body of the Law, called, The Law of Holy Church, and the Canon Law, concerning Ecclesiastical Jurisdiction, in Bishops, Archbishops, Archdeacons, Deans, Chancellors, Commissaries, Officials, Suffragans, Canons, Spiritual Courts, or Court-Christian, Dispensations for Non-Residence, Restraint of Marriage at certain times, as Ember and Rogation-week, Oath *Ex Officio*, Compurgators, Sanctuaries, Penance, Commutation of Penance, Excommunications, Absolutions, Consecrations, Prayers for the Dead, Masses, Dirges, Pompous and Idolatrous Ceremonies; and in conclusion, the whole Body of Popery, upheld and set forth in the old Statutes and Law-books, which are said to be in affirmance of the Common Law, and in other Statutes, many of which are not Repealed: All these are unlawful, having no foundation in Gods Word, and were the Inventions of men, tending to corrupt the Worship of God, *Psal.* 19. 7, 8. *Exod.* 40. 16. *Isa.* 1. 12. *Mat.* 15. 6. *Mar.* 7. 7, 9, 13. (*k*) Many of these Superstitions were taken from the Heathen *Romans*, onely called by other Names, and used by the Papists, as is proved in the particular places where these things are discussed.

(*i*) Art. Cler. 9 Edw. 2. 16. *Chapters about these Superstitions.* *See the books of Canons, and of Consecrat. of Priests & Deacons. Shepherds office of Church Ministers*, c. 8. n. 2, 3, 4, 5, 6. & *Office Churchwardens*, c. 9. n. 1, 2, 3. Donus *or* Domus *Bishop of* Rome, *about the year 661. first divided the Romish Clergie into Ranges and Orders of Bishops, Priests,* &c.

(k) *Tac.* Annal. l. 3. c. 7. p. 75. & l. 3. c. 15. p. 86. *Tit. Liv.* l. 25. p. 545. *D. E.* l. 43. p. 1163. f. l. 1. p. 32. *G.* l. 39. p. 1032. & p. 357. a. & l. 23. p. 495. a. & *Tacit.* Histor. l. 4. cap. 20. pag. 165.

9. The

9. (*l*) The Judgement of *Paine fort & dure*, (when a man charged with Felony, or other Capital Crime, either ſtands mute, or refuſeth to plead to an Iſſue to be tryed by a Jury) it is, That the party Indicted or Arraigned upon an Inquiſition, for his refuſal to plead, ſhall be laid upon his back with a Stone under it, and have weight laid upon him, as much as he can bear, and ſhall have one day three bits of Bread, & the next day Gutter-water given to him; and ſo every day, until he dye with pain. The practice is ſomewhat altered in the execution; for the Condemned is Preſſed to death preſently; and every one that will, is his Executioner. This is a wicked Law, and contains three Offences: 1. The Puniſhment is barbarous, for that there is no Offence in this world againſt men, but a man's life taken away, is a ſufficient ſatisfaction, without any ſuch lingring death. 2. The party being Guilty, is not bounden to accuſe himſelf upon his Tryal; much leſs ought he to be enforced to tell a Lye, and ſay he is Not guilty. 3. The great Offence is, That he is Condemned without Proof, 2 *Cor.* 13 1. *Heb.* 10.28. *Deut.* 17.6. *Numb.* 35.30. *Joh.* 7.51. To this may be added, Setting men upon the Rack, (*m*) Examining them by Torture: a Deviliſh Invention, not long ſince practiſed, and warranted by our Law.

10. The Laws concerning Pariſhes, Parſons, Vicars, Curates, Deacons, Churchwardens, Advowſons, Preſentations to Churches, *Jure Patronatus*, *Non Admiſit*, *Quare Impedit*, *Quare Incumbravit*, *Darrein Preſentment*, *Reſtitutione Temporalium*, *Conge Deſleir*, Admittances, Inſtitutions, Inductions, *Ne Admittas*, *Vi Laica Removenda*, *Excom: Deliberando cautione Admittenda*, *Dedimus Poteſtatem ad Elegendum Abbatum*, Licences to Preach, Suſpenſions, Eccleſiaſtical Cenſures in Eccleſiaſtical Courts: Theſe all are unlawful, as being the Inventions of men, to thruſt out the Officers and Order which Chriſt hath left in his Church. (*o*) The Pariſhes are the Hearth which keep in all theſe Superſtitions; and they were taken up by the Church of *Rome*, from the Heathen *Romans*; as likewiſe were their *Pope*, or *Pontifex Maximus*, their Orders of Prieſts, Deductions, Conſecrations, and many other Paganiſh and Idolatrous Superſtitions:

(*l*) *Paulet.* Pax Reg. & Regni, *ſtand Mute*, fo. 222. *Weſtm.* 1. c. 12. *Fitz.* Cor. 233, 283, 359. *Stamf.* Pl. Cor. l. 2. f. 149, 150. *This Judgment is ſet down at large*, Cowel Inſtit. l. 4. Tit. 18. ſect. 35. p. 334.

(*m*) *In time of Popery this was frequent, and hath been ſince uſed for diſcovery of Treaſon*

(*n*) *Godw.* Ant. Rom. l. 3. c. 2. p 135. & c. 3. p. 142, 143. *Fuller* Holy State, l. 2. c. 12. p. 87. Ex Conc. Toled. 589. can. 9. *An. Coke* Rep. l. 8. *Cawdreyes* Caſe, c. 3. p. 48, 49. c. 4. p. 72, 73. & c. 7. p. 169. *& thence to* p. 356.

perſtitions: And from *Rome* were hither ſent, and continued here all along by the Popes Power, until the Reign of King *Hen.*8. when he took upon him the Popes Office, to be the pretended Head of his pretended Church of *England*, *Lev.* 20,23. *Ezek.*11.12. *Hoſ.*14.8. 2 *Cor.*6.16. *Deut.*12.3. *Cock* Engliſh Law, *p.*16 & 22. 25 H.8.c.20. *Wingate* Law, c.38.p.62. n. 20,21,28.

11. (*o*) The Law for Tryal and Conviction of Hereticks, delivering them to the Secular Power to be burned; the Writ *Hæretico Comburendo* put in execution againſt the faithful Servants of God, called by a Nick-name *Lollards*, about the time of *Rich.*2. and *Hen.*5. and afterwards, whom the Lord Chief Juſtice *Coke* concludes to be Hereticks; and deriving their Name from *Lolium*, as the Papiſts did, rehearſeth that impertinent Verſe of *Virgil*,

Infœlix Lolium, & ſteriles dominantur avenæ.

They were the followers of (*p*) *John Wickliff*, whoſe Opinions we may finde in *Fox* his *Acts and Monuments*, and *Symſon* his *Church-Hiſtory*. Theſe, and thoſe afterwards, by vertue of the Statute of the Six Articles, were put to death onely for matters of Faith and Opinion, without any diſturbance to the State. (*q*) All High-Sheriffs were Sworn (even to the time of the beginning of theſe late Wars) to extirpate theſe Servants of God; and the Anabaptiſts, which onely (*r*) deny Infant-Baptiſm, are reckoned amongſt Hereticks. By this we may judge, what our Law-givers were, and what was a principal end of the Law, *viz.* The deſtroying of the true Faith, and the rooting out of the ſincere Profeſſors of the Goſpel; which is a principal Mark of Antichriſts Power. Theſe are Impious Laws, and the execution moſt abominable, *Rev.*16.6. & 17.6. & 18.24. & 12.13. *Gen.*4.10. *Luke* 11.50,51. *Gal.*4.29.

(*o*) *Fitz. N. B.* 269.b. *Coke* l.5. fo.25. 2 H.4. c.5,15. 2 H.5.c.7.

(*p*) *Raſt.* Entr. Hæreſ.1. *White* Way true Church, ſect. 50, p.393. *Fox* Acts and Mon. Vol.1. p. 608,657,659, 846.

(*q*) *Dalt.* offic. Vice. Juram. Vice. fo.4.

(*r*) *Swinb.* Treat. *Willes*, par.2. ſect.14. & par.5. ſec.2.

12. (*s*) The Laws and Cuſtomes concerning Villains and Villainage, mentioned by *Littleton* and others, obſerved by *Coke* in his Comment upon *Littleton*, and plentifully diſcourſed of in the Old Books, are Heatheniſh and wicked Cuſtomes; That the Villain is as the Lords Goods, and at the Lords abſolute Diſpoſal, and ſo are his Wife and Children,

Theſe Cuſtoms taken from the Romans, Tac. Annal. l.12.c. 11. p.171.

(*s*) *Litt.* l.2.tit. *Villenage*, ſect. 172 *Coke Com. Litt.* l. 2. ſect. 177.& ſect. 189. *wingate* Law, c.9. p. 17. n. 3.n. 5. *Poulton* Pax Reg. & Regni, tit. *Appeal*, fo.159.a.b. *Littleton* tit. *Villenage*, l.2. ſect. 190.

(t) as the *Romans* Slaves; That the Lord may enter upon him, and take his Lands, Tenements, Rents, and Children: And although he that is pretended to be a Villain, bring his Writ to prove himself free, the Lord may seise him as his Villain (u) *Pendente Lite*; and if the Lord rob the Villain, he shall have no Appeal against him. And it hath been said, That if the Lord ravish his Nief (that is, his She-Villain) she could at Common Law have no Appeal of Rape against him: but *Littleton* saith the contrary (w). These Laws abovementioned are too bad for Turks, much more to be abhorred and rejected of Christians, as being against all those Laws of God, which condemn unmercifulness and injustice towards inferiours, *Exod.* 1, 13, 14. *Lev.* 25, 42, 43, 46, 53. *Eph.* 6, 9. *Col.* 4, 1. *Prov.* 12, 10. *Luke* 6, 36. 1 *Kin.* 9, 22. There was nothing more regarded in the foundation of Christian Commonwealths, then the discharging of Slaves and Villains; and such Common-wealths were free from Slaves ever since the year 1250, as a (x) Learned Lawyer hath observed, who taxeth *England* and *Scotland* for continuing such Customs and Services upon their Tenants: And likewise saith the Law of the Twelve Tables, still in force in the *West-Indies* and *Africk*, as too rigorous towards Debtors and Servants.

13. (y) By the Common Law, the King had Power to Pardon Murther: and it hath been commonly used in former Ages, whereby the Land hath been defiled with Blood. This is an Impious Priviledge or Custome, and clearly against the holy Law of God; and seemeth likewise to be contrary to the Kings Oath, although by a Statute of *Edw.* 3. Chap. 2. it appears, such Pardons were very common, and are available in Law against an Act of Parliament, being made with a *Non obstante*, &c. *Prov.* 28, 17. *Jam.* 4, 12. *Exod.* 21, 12. *Weems. M. L. Com.* 6. *Decal. Exercit.* 9. p. 131. (z) It's written, *That of all the Senate who murthered* Julius Cæsar, *there was scarce one that either survived him three years, or dyed a natural death.* The Historian saith, *They were all Condemned:* and it doth not appear, that any one of them had a Pardon. (a) No Soveraign Prince, or any Man living, can pardon the Punishment due

(t) *Those whom we call Villains & Niefs, the Romans called* Adscripti-vos Glebæ: *they plowed & laboured, and might be sold.*

(u) Appius Claudius seised Virginia *upon this pretence,* Tit. Liv. l. 3. p. 117. b.

(w) *If the Lord marry his Nief (or she villain) and die seised of Land in Fee, this wife shall not be endowed because she was his Villain,* Jo. Perk. *tit. Dower* sect. 314.

(x) *Bod.* Rep. l. 1. c. 5. p. 39, 40. & p. 45. *These Slaves are at large described, as above is said.* *Cowel* Instit. lib. 1. Ti. 3. sect. 3, 4, 5.

(y) *Rast.* Entr. tit. *Appeal*, fo. 51. b. 27 H. 8. c. 24. *Paul.* Pax Reg. & Regni, tit. *Pardon*, f. 218. b. & 219. a. 1 Ed. 3. c. 2. 4 Ed. 3. c. 13.

(z) *Sueton: Tranq. in vita Julii Cæsaris,* sect. 89. *in fine.*

(a) *Bodin.* Rep. l. 1. p. 174. & p. 175.

due to the Offence, which is death by the Law of God, no more then he can diſpenſe with the Law of God, whereunto he is himſelf ſubject.

14. (*b*) The Oathes of Homage and Fealty to Lords of Mannors, are Snares upon mens Conſciences, and ſavour of Tyranny and Oppreſſion: The Oath of Homage (beſides that which is mentioned in the old Books, the ſubſtance whereof was, That the Tenant would be the Lords True-man) hath many trivial additions to it, which are not of concernment enough to be the cauſe of an Oath, and other things not fit to be ſworn unto; and all are againſt that Law, *Thou ſhalt ſwear in Righteouſneſs and Judgement*, Jer.4.2. Exod.20.7. Jam.5.12.

(*b*) Cuſtom Norm. tit. *Tenure par Homage*, fo.27.b. *Kitchin* Court-Baron. *Cowel* Inſt.l.2. tit.3.§.3.p.115 *S.* 15. p. 119. *Wingate* Law, c.7.p.13.n.29.

15. (*c*) The Attributes of God in the Law given and aſcribed to the Kings of *England*, are too high (if not Blaſphemous) *viz.* Majeſty, Soveraignty, Moſt Sacred Majeſty, Infinity, *&c.* Ubiquity, Immortality, Perfection, Verity, Abſolute Juſtice, *&c.* (*d*) And by Sir *Edw. Coke*, ſeven times King *James* is called, *Le Fountain de tout Piety & Juſtice, & la vie de la ley*, The Fountain of all Piety and Juſtice, and the life of the Law. O fearful Blaſphemy! Although it muſt be conceived, that theſe Attributes are but Analogical Expreſſions, yet it may be obſerved, That ſuch Arrogancy (eſpecially when by this temptation it's taken to himſelf, of whom it's ſpoken) (*e*) is a certain ſigne of Ruine, as was ſeen in *Herod*; when the people cried, *The voyce of God, and not of man*, then was he ſmitten, *&c. Acts* 12.22,23. He that ſaid, *Mine honour will I not give to another*, will endure no ſuch pride. (*f*) That famous worthy *Guſtavus*, King of *Sweden*, foretold his own death upon this very ground; and (although he proteſted againſt the impious Acclamations of the people) was ſlain within two dayes after they were given to him. We condemn ſuch Hyperbolical Titles in the Turkiſh Emperour and the Pope; and by ſuch means the Heathen *Babylonians*, (*g*) *Perſians*, and *Romans*, came to Deifie their *KINGS* and *EMPEROURS*. But

(*c*) *Finch* Νομοθεσία, l. 2. f.20.b.fo.21.a.

(*d*) *Co.*Tit.Pa. to his 5,6,7,8, 9,10,11 *Rep. Plowd.* Com. fo.234.a. & 177.a,b.

(*e*) *Such Emperors and Princes who have taken that Honour to themſelves, which is due to God alone, as did* Caligula, Domitian, Commodus, Antiochus, *&c. have all and alwayes miſerably periſhed*, Jun. Brut. vind. contr. Tyrann. p.14.

(*f*) *Gualdo Priorato*, Bell. Germ. p.125. *Battel Lutzen*, p. 19,20. *Divers of the Roman Emperors would not ſuffer themſelves to be called Lord*, Jun. Brut. vind. contra Tyrann. p.51.

(*g*) Cœl. Rhod. Lect. Antiq. l. 8.c.2. p.281.

(h) *Suet.* Tran. in vita *Auguſti Cæſaris*, ſect. 53

(h) *Auguſtus Cæſar* abhorred ſuch Flattery, and refuſed ſo much as to be called *Gracious Lord*, (i) but was called *Prince*; and it may be obſerved, That Almighty God, to prevent ſuch arrogancy, when he ſaith, *I have ſaid, Ye are* (Elohim) *Gods*; or, as the word ſignifies, *Mighty Judges*, preſently addeth, that *Ye ſhall dye like men.* All muſt remember this, *Pſal.* 89.6. 1 *Sam.* 2.30. *Iſa.* 42.8. & 48.11. *Dan.* 4.30,36. *Acts* 12.22.

(i) *Corn. Tacit.* Proœm. l. 1. Annal. p. 1. & l. 2. c. 19. p. 61.

Bodin. Repub. l. p. 181.

A very Learned man hath ſet it down, That for a Soveraign Prince to arrogate to himſelf the Titles of *Moſt Excellent and Sacred Majeſty*, is abſurd; the one being a point of Lightneſs, and the other of Impiety: For (ſaith he) *what more can we give to the moſt Mighty and Immortal God, if we take from him that which is proper to himſelf?* And he cenſureth the Princes of *Germany*, for that in a Letter to the King of *France*, there were *V. S. M.* which is *Veſtra Sacra Majeſtas*, which he calls, *An addition proper unto God.*

16. That a Diſſeiſer, taking a mans Land from him by (k) force, after a Diſcent, he that hath Right, and is the true Owner of the Land, cannot enter upon the Heir of the Diſſeiſer: This is an unjuſt Law, and a ridiculous thing, That he that hath Right may not enter. This was a Cuſtome uſed in favour of ſuch whoſe Anceſtors had entred upon other mens Lands in the time of Wars, and put out the Owners: Then the Conqueror or Prevailing Party allowed this Priviledge to ſuch of his Party who had ſo entred. Here a man by doing Wrong gets a Right, and the Magiſtrate ought to remedy it, *Iſa.* 58.6. *Ezek.* 45.9. *Pſal.* 7.16. *Luke* 3.14. *Mich.* 2.2.

(k) *Littleton*, l. 3. c. 6. ſec. 385. *Coke* Com. *Lit. upon the ſame place*, fo. 238. a, b. *Coke* l. 2. fo. 56. *Doct. & Stud.* c. 8. fo. 16.

17. The Laws concerning Chaſes, Parks, and Warrens, are a great Oppreſſion to the Common-wealth, as now things ſtand, as it's partly declared before, where the Charter of the Foreſt is ſpoken of. It's true, King *William* the *Conqueror* had a Title which he got by his Sword and by his Bowe, and had the more reaſon to diſpoſe of thoſe Lands as he pleaſed, and of the Lands adjacent as men would hold of him: But now time, and (it may be) lawful Purchaſees, have made men Owners of ſuch Lands; and to make them ſubject to the Foreſt-Laws, is a great Oppreſſion, and contrary to all thoſe Laws of God which forbid Oppreſſion. It is to be hoped, theſe waſte

Charta Foreſtæ cap. *Manwood* Foreſt Laws, par. 2. n. 1. par. 1. p. 139. 21 Ed. 1. c. *Cowel* Inſtit. verbo *Foreſt.*

waſte grounds will be put to better uſe, 2 *Chron.*16.10. *Iſa.* 1.17. *Prov.*22.16. *Ezek.*18.7.

18. (*l*) The Law concerning Occupancy: when a man hath a Leaſe of Lands for one or more other mens lives granted to him, without the word *Heirs*; the Grantee dyeth: now whoſoever after his death firſt enters and claims the Land, ſhall have it during the Leaſe, without any other Title: whereas if it cannot go to the Heir, it ſhould come to the Executor. This is an unjuſt Law, and ſerveth for nothing but to cozen ſimple men of their Right, 1 *Theſſ.*4.6. *Lev.*19.13. *Exod.*20.17. *Mic.*2.2. *Rom.*13.9. Before Dominion was ſetled, the firſt Poſſeſſor had a Property which *Pliny* calls, *Proprium habentes*; and *Grotius*, *Jus occupantis*: but this is at an end, becauſe every thing hath an Owner.

(*l*) *Coke* Com. *Litt.* l. 1. c. 6. ſect. 5. & 381. *Coke* l.6.fo.37. l.10. fo.38. *Occupancy is only where there is no proper Owner*, Geſſend. de Philoſ. Ep. c. 1756.

19. (*m*) That a man being Outlawed, and his wife waved in a Perſonal Action, and the wife taken upon the Utlawry, ſhe cannot reverſe the Utlawry, nor get out of Priſon by the Law, unleſs her husband will joyn with her in a Writ of Error to reverſe the Utlawry; when it may be the Utlawry, was ſued by the conſent or practiſe of the wicked husband, (I have known the like done.) This Law tends to overthrow Oeconomy, or Houſhold-Government: Upon ſuch an occaſion it's ſaid, the Judges gave this Rule, That it was a Trick to be rid of a Shrew. But this is clearly againſt the 5th and 6th Precepts of the Decalogue, and many other parts of holy Scripture, *Gen.*2.24. *Exod.*21.10. 2 *Sam.*12.3. *Mat.* 19.6. *Mar.*10.9.

(*m*) 40 Ed.3. 34.b. 2 R.3.15. *Finch* Νομοθεσια, fo. 12.

20. (*n*) The Law concerning Wrecks of the Sea: If a Merchant fraught a Ship, hire a Maſter, and all Officers and Mariners, and ſend his Son to Sea in it; all theſe ſuffer Shipwreck through the hand of God, by Tempeſt or other Diſaſter, and the Ship is loſt, and no living creature, Man, Dog, or Cat cometh alive to ſhore, but many of the Goods float, and are driven to land: In this caſe the Owner ſhall by the Law have none of theſe Goods, but they belonged to the King, or to the Lord of the Mannor, who if he had a Grant of ſuch Wrecks, ſhall have the Goods. This is an unjuſt and cruel Law, and addeth affliction to the afflicted, and cauſeth the wicked people who live by the Sea-ſide, to wiſh and wait for ſuch

(*n*) *Weſtm.*1. c.4. *Coke* l.6.f.107.a Cuſt. *Norm.* tit. *Wreck*, c.17 *New Term law* verb. *Wreck*. *Plow.* Com. fo. 243.b.

such Disasters, that they may get the Goods, calling the Goods so gotten, Gods good, *Zeph.*1.15. *Amos* 15.15. *Obad.* 13. *Phil.*2.16. *Jam.*1.27. It is a thing (saith a Learned Statesman) truly most barbarous, and not anciently used by Soveraign Princes, shamefully to suffer the Reliques of the Goods and Fortunes of such as have by Shipwreck miserably perished (and whom we ought with some part of our own to relieve, being cast upon our Coasts, and which ought to be restored) to be shamefully spoiled.

Bodin. Repub. l.1.179.

21. The like unjust Law is this: If Goods be taken from the (*o*) Owner by an Enemy, the Property is changed, and the Owner shall not have them restored, unless he recover them before the Sun go down, although he finde them afterwards. (*p*) The *Romans* had a more just Law in this point, *viz.* That by Theft no man should gain a Property in Goods, but the Interest should alwayes remain with the Owner, to take them whenever he could finde them: So is Gods Law, *Lev.* 19.13. *Luke* 19.8. Certain persons were appointed amongst the *Romans*, to see Restitution made of those things which had been by force taken away in time of War. And the Law of the Twelve Tables seems to warrant this.

(o) *Wingate* Law, c.11. p. 19.n.23.

(p) *Godw.* Ant. Rom.l.3. sect. 4.c.16.

Tac. Hist. l.4. c.17. p.159

22. The Law concerning *Gavil-kinde* Lands, where all the (*q*) Sons shall inherit as Coheirs; and such Tenures where all the Children shall inherit together; This is against the Law of God, who hath appointed the eldest Son to the place of his Father, as Prince of the Family, and to have a double Portion of his Goods, if he do not forfeit it by some notorious Crime, as *Reuben* did: Therefore *Judah* had the Kingdome, *Joseph* the Double Portion, and *Levi* the Priesthood, *Deut.*21.17. 1 *Chron.*5.1,2. *Gen.*49.3. *Gal.*4.1. *Heb.*12.16. (r) *Bodinus* in his *Republique*, would have a double portion of Lands and Goods assigned to the elder, and the rest an equal share.

(q) *Kitchen*, fo.102. *Camd. Brit.* p. 239.

(r) *Bodin.* Rep. l.5.c.2.p.571

23. The like may be said of the Tenures in Borough (*s*) English, and Copyhold-Estates, where the youngest Son shall inherit, contrary to the Law of God and Nature: which Custome grew, as some (pretending to know much of such Customes) have said, That these Lands, or many of them, being held in Villainage (although now purchased by Free-men, who

(t) Cust. *Norm.* tit. *Tenure par Burgaye*, fol. 135.b *Kitch.*fo.132.

who are not, nor can thereby be made Villains) the Lord did usually lie with the Tenants wife the first night after the Marriage, and therefore they obtained this Custome, lest the Lords Bastard (not being a Bastard in our Law) should inherit, as possibly it might be. This I will not positively affirm to be the ground of the Custome; though I have seen a very ancient, authentick Evidence, testifying such a power in the Lord: And I dare say it's easie to make appear, That divers Mannors and Lands in *England*, were anciently granted to hold upon such terms, and upon other such-like wicked Covenants, if not Customes, not fit to be inserted, in regard of the baseness and filthiness thereof. *Littleton* saith, The yongest Son should inherit, in regard he is least able to (*t*) help himself; which is no reason: for if *Littleton* mean, that he is less able in respect of ability of body to fight or defend himself, or to work; Experience shews, That the younger is many times more able, and the eldest less fit, and more indisposed to labour, in respect of his Primogeniture: And if it be meant in respect of Estate; if the Customary Tenant have two Sons, and nothing else but the Land so holden, and that go to the youngest Son, what ability hath the elder to himself, more then the younger would have had, being in his condition? (*u*) The youngest in this case shall not have an Appeal for the death of his Father. This Custome is clearly against the Law of God and Nature, *Deut.* 21. 17. 1 *Kings* 2. 15. *Weemse M.L. Com.* 5. *Exercit* 7. *p.* 41.

(*t*) *Littleton tit. Villenage*, l. 2. sect. 211.

(*u*) Poulr. *Pax Reg. & Regni*, tit. *Appeal*, fo. 157. b.

24. (*w*) The Returns of Writs upon the Dayes dedicated to Saints, and Angels, and Apocryphal Saints; and upon Popish Holydayes, such as S. (*x*) *Michael*, S. *Hilary*. S. *Martin*, *All Souls*, *All Saints*, *The Purification*, at the best are Superstitious: and it's determined by the Learned, That the Dedication of Dayes to Saints, is part of the Idolatry of the last times: much worse are some of those Dayes mentioned in the Statutes, dedicated to Idols; as the *Rood*, *Corpus Christi*, the day when the Idol, or false Christ, was carried in Procession, and worshipped, being the third of *May*; S. *Thomas the Martyr*, that is, *Thomas a Becket*, mentioned in

(*w*) Stat. 51 H. 3. *Dayes in Real Actions*: & 51 H. 3. *Dayes in Bower*. *Preface to the book of Common-Prayer*. 5 & 6 Ed. 6. cap. 3. 2 H. 5. cap 4.

(*x*) *The true* Michael *is Christ, who is like God, as the Name signifieth*, Dan. 12. 1. *But this is some counterfeit* Michael.

in the Statute, who was adored and worshipped blasphemously, thus: *Tu per Thomæ sanguinem, quem pro te effudit, fac nos Christe scandere quo Thomas ascendit.* (y) The dayes of the Week dedicated to the *Sun*, *Moon*, *Tuysco*, *Waden*, *Thor*, *Friga*, and *Seater*, being old *Saxon* Idols. The like may be said of the Moneths dedicated to *Janus*, *Mars*, *Maia*, (z) *Julius Cæsar*, *Augustus Cæsar*, &c. These are taken notice of, and used in the Law upon all occasions, and cannot be changed, without change of the Law; but they ought all to be abolished, according to those Laws, *Psal.*16.4. *Deut.*12.3,4. *Exod.*22.20. & 23.13. *Perk. Idol last Times*, 1 *Vol. p.* 683. *Col.* 1. *August. de Civit. Dei, l.*12.*cap.*10. 1 *Corin.*10.12. The (a) Heathen had such Holy-dayes, dedicated to Idols; in imitation of whom, the Papists appointed such dayes as are first mentioned.

(y) *Verst. Rest. decayed*, Intel. p.54,55,to 64. (z) *Suet.* Tran. Sup. *Jul. Cæs.* p.2. & in vita *August. Cæsar.* sect.31. *Symf.* Church-History, *in the Life of* Commodus, *p.* 27. Ex *Euseb.* (a) *Tit. Liv.* l. 29.p.719.f. *Tac.* Anna.l.12. c.7.p.42.

25. The Oath, as it's administred in all Courts, smelleth of (b) Idolatry. (c) The Jews swear upon their *Thorah*, which is the *Pentateuch*, or five Books of *Moses*. This Custome is condemned as Superstitious: our Laying the Right-hand upon the Gospel or New-Testament, and kissing the same, is no better. Although some Superstitious persons account these very profitable and significant Ceremonies; They ought the rather to be rejected, for that such a kinde of Oath hath no resemblance to any Oath in holy Scripture: But rather the lifting up of the Hand (d) is to be approved, and the significancy of the Ceremonies abovesaid (an Oath being a Solemn part of Gods Worship) makes them utterly unlawful; for that it is the Office of Christ in his Word, to appoint Teaching Ceremonies in his Worship. And the truth is, by the Common Law, the party Swearing makes Idols of the Saints, and sometimes of the Book; the words are, *So help me God, and all* (e) *Saints*; and sometimes, *The Contents of this Book*, Gen.14.22. Deut.32.40. Rev.10.6. Deut.6.13. Mat.5.34,35. Some Lawyers hold, and amongst the Civilians it hath been constantly used, That the Guardian may swear upon the Soul of his *Minor* or *Pupil*: The very words of the Law are these, which I finde in a (f) Body of the Law,

(b) *Stamf.* Pl. Coro.tit. *Trial per Battel*, l.3. c.14.f.177. (c) *Willet* in Exo. Hex. in Com.3.Decal. (d) *Laws* Geneva, *pag.* 12. *These Ceremonies of Laying the hand upon, and kissing the Book, are condemned by the most Learned. See the Treatise of* Oathes, *p.*57.*written by the Nonconformists.* *Horn.* Mirror Justice,c.3.sec. 24,25. *Expos. Forest-Laws*,fo.40.*an old Manuscript.*

(e) Idem *Cowel* Instit. l.2. Tit.3. sect.8. p.115. & sect.15. p.119. & p.287. (f) *Cowel* Inst.Jur.Angl.l.1.Tit.21.sect.4.p.70. Ex *Fitz.*N.B. f.118.

sect

ſet forth by the late Kings Profeſſor of Law in *Cambridge*, *Cuſtos in Animam minoris Jurare poteſt* : and ſo the Proctor or Attorney may ſwear upon the Soul of his Maſter. This is the ſame with *Jurare in verba Magiſtri.*

26. (*g*) The Law againſt Felonies in many Caſes, as the Stealing of Goods worth five ſhillings out of a houſe, or from a Stall in a Fair or Market, or any ſmall ſum of Money from a Mans Perſon ſecretly, and ſome greater Felonies, for which the party convicted ſhall have Judgement of Death, without any mercy or moderation of Juſtice, as it's called; when more heinous Offenders have favour ſhewed them, by means of that fooliſh Uſage, The Clergie: This ſeverity is clearly againſt the Law of God. (*h*) It's a Rule amongſt the beſt Learned, That it is not lawful for any Magiſtrate, to inflict a greater Puniſhment for any Offence, then is appointed by *Moſes* Judicials, (although it's held, there may be a mitigation, Circumſtances being conſidered, in ſome caſes not Capital) nor to adjudge any man to death, where the Sentence of Death is not given by *Moſes*. *Willet Hex. in Exo. General Obſervat.* p. 4. (*i*) This ſeverity may better be turned to ſervitude and labour (where Reſtitution cannot be had) in the Houſe of Correction, like the Romans *Piſtrinum*, or *Metallum*, or *Mine-works*; or the *Greeks* ἐργαστήριον. This would be a greater terror to the Atheiſts of this Age, then Death it ſelf; (it being a profeſſed Maxime amongſt ſuch, *That a ſhort life and ſweet, is better then a long life and ſorrowful*) and the ſame is more agreeable to Gods Law, *Eph.* 4.28. *Exod.* 22. 1,3,4,7. 2 *Sam.*12.6. (*k*) Where other Puniſhments are by Laws inflicted (without note of Severity) for Crimes not Capital, which make mens lives miſerable, There is no uſe of the Executioner or Halter.

(*g*) Kitch. *Felo.* fo.26. 23 H.8.c.1. 1 Ed.6.c.12. 5 Ed.6.c.9.10. 8 El.c.4. 39 El.c.15. Doct. & Stud. c.8. fo.17.b.

(h) *Willet* Hex. in Exo. Gen. Obſerv.p.4. *Rawl.* Hiſt.l.2. c.4.ſect.16. *for the Magiſtrate to ſhew more rigour then* Moſes, *becometh not the Goſpel.*

(i) *Godw.* Ant. Rom.l.3. ſect. 3.c.9. *Cock* Eſſay, p. 166.

(k) *Tac. Annal.* l.14. c.13. p. 215.

27. (*l*) That Law, That he that hath the perpetual Advowſon of a Church (as it's called) may ſell the next Preſentation when the Church is full, ſo the Incumbent be not *Languidus in Extremis*; it being a Lay-Hereditament: This is an Impious Law, and the Merchandize of *Rome*; whoſe Merchandizes are (amongſt other things) ſaid to be *the ſouls and* σώματα *bodies of men* (not Slaves, as it's uſually read; for that properly appertains to the Turk.) And this Prophe-

(*l*) 15 H.7.c.8. *Finch* Νομοθεσία, f.145.b *Raſt.* Entr. tit. *Quare Impedit*, fo.473. a,b. 474.a. 465.b. *Coke* Entr. tit. *Quare Impedit*, fo.469.a.489.a

ſie can be no other way fulfilled, but by ſelling the ſouls and bodies of men in this manner, *Rev.*18.13. *Mal.*3.11. 2 *Cor.*2. laſt ver. *Paræus* upon *Rev.*14.16,17.

(*m*) 21H.8.c.6 13 Ed.1. *Stat. dict. Circumſpectè agatis. New Terms Law*, verb. *Mortuary. Cowels* Interp. verb. *Mortuary.*

28. The Law concerning payment of (*m*) Mortuaries, that is, the beſt good (as a Herriot is to the Lord) or Money, as the Cuſtome hath been; or rather, a certain Rate ſetled by the Statute of King *Hen.*8. It was originally a thing given to God, to purge the guilt of the party deceaſed, which he contracted by omiſſion or non-payment of Tythes; but hath been alwayes claimed and received by the Prieſts in Time of Popery, and ſince by their Succeſſors, the Parſons and Vicars: The Law is Superſtitious, and the payment unlawful, being a Conformity to Idolaters, and a derogation from the All-ſufficient Merit of Chriſts Sufferings, 1 *Cor.*6.14. *Levit.* 20.23. *Iſa.*1.12. *Ezek.*43.8.

(*n*) Heb.7. 5, 12. Furius Camillus *upon the taking of* Vij, *gave the Tenth of the ſpoil to* Apollo *at* Delphos, *Tit.Liv.* l.5.

29. The Laws concerning payment of Tythes, is taken (*n*) from the Levitical Service, where the payment was a meer Ceremony, and imployed for the Maintenance of that Levitical Service, and was by the Law of God diſpoſed of to the Levites, the Prieſts, and the Poor, *&c.* and afterwards this payment of Tythes was taken up by the Heathen, (*o*) both *Greeks* and *Romans*, who paid their Tythes in a manner as the Jews did. The *Greeks* firſt uſed it, and then (*p*) the *Romans*, (who took many of their Laws and Cuſtomes from the *Gracians*, as the Law of the Twelve Tables, and other Laws of *Athens*) alſo received this Cuſtome. Then, when the State of *Rome* under the Papacy was advanced, at the breaking of the *Roman* Empire, were theſe things received; and by little and little, a Body of Religion, falſly ſo called, was patched up together, conſiſting partly of Jewiſh, and partly of Heatheniſh Cuſtomes, impoſed upon *England*, as well as other Countreys, as may be ſhewed at large. It onely ſufficeth for the matter in hand, to know, That theſe Tythes were Levitical and Ceremonial, (*q*) and ſo are reckoned by the Learned, and are aboliſhed with the Temple, and were not received into the Chriſtian Churches

(*o*) *Rosin* Attic. Ant. l.2.c.9.p. 59 & 96. *Godw.* Antiq. Rom. l.3. ſect. 4.c.11.

(*p*) *Godw.* Ant. Jud.M.A. l.6. c.3.p.250,251, 253. *Fox* Act. Mon. Vol.1. p.336. Col.1.

(*q*) *Paræus in* Apoc. *c.*13,16. *Weemſe* Cer. Law, Com. 1. Exercit.1. p.3. & Com. 2. Exercit. 16. p. *Bellarm.* Contr. lib. de Cler. p.316,317,318.

in

in (r) ſome places, until (s) many Hundred years after Chriſt; and the Miniſters may as well fall to Circumciſing and Sacrificing, as to Demand Tythes as due by any Divine Law. But it may very well be conceived, That the Devil endeavors to keep up theſe Tythes, on purpoſe to hinder the efficacious progreſs of the Goſpel, which ſeldome doth any good, where there is jangling and wrangling about payment of Tythes, as there is commonly in every Pariſh where they are held to be due *Jure Divino*, *Levit.*29.30,32. *Deut.*18.4. *Numb.*18.24,26. *Nehem.*10.37,38. *Cock* Engl. Law, *p.* 22. The Prieſthood (which received Tythes) is changed, then muſt there of neceſſity be a change of the Law, *Heb.*7.5,12.

(r) *The Money called* Smokepeny, *was granted to the Pope by* Ine *King of* England, *An.* 740. *and augmented by* Etelpe, *which they called* Peter-pence, *Bodin.* Repub.l.1.p.116.

(s) *Fox* Acts & Mon. Vol.1. p.336. Col.1. Ex *Chryſoſt.* & *Auguſtino.* *Bellar.* Contr. l.8. *de Cler.*p.315.

30. The like may be ſaid of the Laws concerning payment of Firſt-fruits and Tenths, whether thoſe which were paid to the King, or ſuch as were paid to the Pope, being all one: The Firſt-fruits are one years Profits; the Tenths are a Tythe anciently paid to the (t) Pope, until in the time of King *Edw.*2. Pope *Urban* granted them to that King, to have his aſſiſtance againſt the *French*. The Pope received them, in Imitation of the High-Prieſt, as Head of the Church, and Chief of the Clergie; and ſometimes the Kings of *England* had them after *Edw.*2. and ſometimes the Pope received them. (u) But King *Hen.* 8. when he Caſhiered the Pope, declared Himſelf Supreme Head of the Church of *England*: And from that time he received theſe Firſt-fruits and Tenths, and Erected a Court called, *The Court of Firſt-fruits*, being now part of the Exchequer, where the ſame were received; and there they are paid until this day. (w) Theſe are likewiſe in the ſame condition with Tythes, and were paid towards the upholding of the Levitical Service, and therefore with the Temple are Aboliſhed, *Exod.*22.29. *Deut.*18.4. *Lev.*2.12.&27.30,32. *Exod.*23.19. *Heb.*7.12.

(t) *Cowel* Int. verb. *Tenths.*

(u) 26 H.8.c.3. 1 Eliz.cap.4. *Theſe payments ceaſed to be paid to the Pope, when King* H.8. *revolted from the Pope,* Ann.1534. *until then,* England *was the Popes Vaſſal,* Bod.Repub.l. p.116.

(w) *Rous* Attic. Ant. lib. 2. cap. 9.

31. The Law concerning (x) *Deodands*, which is by Law de-

(x) *Wing.Law,* c.19.p.30.n.27

declared to be ſomething given (or as it were forfeited) to God, for (*y*) pacification of his wrath, in caſe of miſadventure, where any Chriſtian Soul cometh to a violent end, without the fault of any reaſonable Creature. Theſe are the words of the Book: It is that which moveth to the death of any man, is a *Deodand: Quicquid movet ad mortem hominis, Deodandum eſt.* This is a Superſtitious Imitation of the Papiſts, and derogatory to the All-ſufficient Satisfaction of Chriſt, *Heb.*9.22. *Pſal.*49.7. *Mic.*6.7.

(*y*) *Coke* comp. Copyholder, ſect.27.p.9. *Stamf.* Pl.Cor. l.1. c.2. *Cowel* Interp. verb *Deodand. Si equus*, &c. *hominem occiderit quaſi ſacrum ſit: (niſi ad Regem ſpectet) neſcio an vetevi conſuetudine comburi ſoleat*, Cowel Inſtit.l.4. Tit.8.ſ.1.

32. That a man pretending Right to a houſe next to him, watcheth an opportunity, and finding no one in the houſe, gets in peaceably, mures up the door, and layes it to his own houſe, and ſo holds it without force: This is ſaid by ſome to be no forcible Entry againſt any Law; and I have heard it ſo delivered upon the Bench: (*z*) neither can the party put out, have reſtitution of poſſeſſion, or any way get in again, but by an Action at Law, although he lie out of doors in the mean while. This is a Law, whereby Hundreds of poor men may be made deſtitute of houſes. The ſame is ſaid of Tenants in Common, or Joynt-Tenants; if one caſt out the other by force, and ſo keep him out by force, he cannot be reſtored to the poſſeſſion, by the Statute 5 *R.* 2. So if a Diſſeiſſor or Abator of the Anceſtor, be in poſſeſſion before the Heir (his Anceſtor being dead) and holding him out by force, he cannot have reſtitution, *Mic.*2.2. *Exod.* 20.17. & 21.28. *Rom.*7.7.

Stat. 5 R.2. c.

(*z*) *Pault.* Pax Reg. & Regni, tit. *Forcible Entry*, fo.39.

33. The Common Law eſtabliſheth an Idolatrous Service to be done by Popiſh Prieſts (inſtead of the true Service of God, performed by a lawful Miniſtery) whoſe chief work was the Offering up the unbloody Sacrifice of the Maſs; which with their Blaſphemous Prayers to Saints, and fooliſh Petitions for the Dead; their Croſſings, and pompous Ceremonies, and ſuch-like bodily Exerciſes, is called Officiating the Cure (a word ſtill retained:) they are alſo to ſee Holy-days obſerved. (*a*) Now at the beſt, the Statutes favour a reading-Miniſtery to do Divine-Service, as it's called, and to reade

Coke Com. *Lit.* l.2.c.6.ſect. 134,135. *Found. Colleg. Wigorn'by* H.8. Can.14.& 58.

(*a*) *Sheph. Offite of Ch. Miniſt.* p. 262,272,273. 5 & 6 E.6 .c.3.

reade Homilies; and I know no ancient Law, to enforce any man to do more. And accordingly, moſt of the Parſons and Vicars of the laſt Edition, do after this manner; for they have no gift of Preaching, nor are they in any ſort apt to teach, but can onely reade a written Sermon out of a book, which is but a Childe's work, and therefore are not to be accounted any Miniſters of the Goſpel. This will never be amended, ſo long as the Pariſhes ſtand as they do: ſome of theſe Parſons or Vicars have ſaid, They have not *Curam Animarum*; there is the Land to pay them their Tythes, they will do what they are bounden to do, and no more. However, this is a great Profaneneſs and Impiety, and contrary to the Dutyof a faithful Miniſter, *Neh.*8.4,8. 2 *Tim.*4.2. *Acts* 13. 16. 1 *Tim.*4.13.

34. The Garments of the Serjeants and Judges, eſpecially at the Serjeants being called to that Degree, when they come to the Chancery-Bar to have their Charge, are Superſtitious, inaſmuch as they are accompanied ſignificant Ceremonies. The Robe, the Coyf, the Hood, and all the reſt, all very (*b*) Theologically, or rather Superſtitiouſly expounded by my Lord *Finch*, when he was Lord *Keeper*, which I heard with my own ears. Theſe things were never ordained to teach mens duty to God; but, ſuch Garments ſerve for Civil Ornaments, and diſtinction of the Degrees of Men; as the Sword, the Cap, and the Mace, *&c.* are Enſigns of Magiſtracy fit to be uſed: But we muſt not learn our duties to God, by the Traditions of Men; we are ſent *To the Law, and to the Teſtimonie*: Chriſt is the Teacher of his Church, *Mat.*17.5. *Iſa.*8.20. *Joh.*14.26.

(b) *Lord* Finch *his ſpeech in Chancery to the Serjeants call'd when he was Lord Keeper.*

It is ſaid, that the Enſigns belonging to the Doctors lately created in Ireland, *were by the Dr. of the Chair all Expounded and made ſignificant*, &c.

35. That (*c*) Marriage, (*d*) Burying the Dead, (*e*) and Funeral-Orations or Sermons, are by the Law belonging to the Miniſterial Function: Whereas Marriage is a Civil thing, common to all Nations, and is to be Celebrated by the Magiſtrate, *Cock* Eſſay, *p.*152. and it was never uſed otherwiſe, until the Church of *Rome* thought it profitable to be made a

(c) *Canon* 67,68.

(d) *Canon* 72.

(e) *Funeral Orations uſed amongſt the Heathen Romans*, Tac. Annal. l.3. c.15. p.88.

So Marriage was uſed with Confarreation, with a Cake of Wheat, as a Religious Ceremony.

Godwin Antiq. l.4. c.5. pag. 94,95.

Sa-

At New-England *Marriages are ſolemnized and done by the Magiſtrates, and not by the Miniſters,* Lechford News, p.39.

At Burials nothing is read, nor any Funeral-Sermon or Oration, Idem ut ſupra.

Sacrament. And for Burying the Dead, it's no more then a work of Civility and Charity: *Devout men carried Steven to his Burial, and made lamentation for him,* as *Iſrael* did for good *Joſiah*, and the *Egyptians* and *Joſeph* did for *Jacob*; and, *The dead may bury their dead.* And for their Funeral-Sermons, or rather Orations, they were uſed by the Heathen, and taken up by the Papiſts; the firſt Praiſed the Dead, the laſt Pray for the Dead. But I do not finde, that anciently the Miniſter had any more to do in theſe things, then any private man; and the uſe of them is Superſtitious, and contrary to the practice of Scripture-Saints; and the laſt tends much to harden men in a courſe of ſin, generally all men being praiſed when they are dead, although they were never ſo wicked, if but any thing of good, either in word or action, was wringed from them in their ſickneſs, or in their life-time: as (*f*) who is ſo bad, but ſomething which is good may be gotten from, or obſerved in him? *Deut.* 25.9. *Ruth* 4.2, 8, 9. *Joh.* 2. *Gen.* 50.7, 10. *Acts* 8.2. Marriage is inrolled as a Civil Contract by the Magiſtrate at *Geneva* (g).

(f) *Fuller* holy State, *l.2.p.*104

(g) *Laws Geneva*, p.27.

36. The Law enforcing all perſons of age of diſcretion, how profane ſoever, to communicate at the holy Table of the Lord three times in the year; whereof one to be at *Eaſter*. And although ſometime Miniſters have ſeemed to purge their Pariſhes, by calling them to a kinde of Auricular Confeſſion, (which is a way of Antichriſt) yet is there no reſtraint, nor is it any offence againſt our Law, to admit all to the Table; contrary to the Word of God, 1 *Cor.* 11.28. *Heb.* 10.29.

Biſhop Neals *Injunctions in* Lich. *Dio: grounded upon the Canons.*

(*h*) 7 H.4.c.15 8 H.6. c.4. *Plowd.* Com. fo.126.a. *Raſt.* Entr. tit. *Parliam.* f.410.

37. (*h*) The Chuſing of Knights of the Shire in ſuch a Popular way, the Voyces being made alwayes by Imbracery, Terrour, or Friendſhip, is a Wrong and Oppreſſion. The courſe uſed in Chuſing Officers amongſt the *Romans* and *Grecians*, and the choyce of the Duke of *Venice* by Billets, is a more excellent way, where no exception can be taken: but moſt impartial and agreeable to the Word of God, is caſting of Lots, *Godw. Ant.* l.3. c.2. p.135. uſed at *Geneva*: See the Laws of *Geneva*, p.12. At *Genoa*, Bodin. *l.2. p.*232. At *Venice*:

Venice: So the Senate is Choſen at *Bern*, *Baſil*, *Zurich*, and generally in all Common-wealths.

38. (*i*) A Form of Prayer for Publick Worſhip, the Book of Common-Prayer, and ſince the Directory for Worſhip, in this reſpect the ſame, are unlawful; for that a certain number of men, as if they were the Repreſentative Body of the Church, conceive a Form, and all men are enjoyned to uſe the ſame, or the like in effect. This is a Humane Invention put upon the Miniſters and People, without warrant from the Word: and (as a wiſe (*k*) Stateſman once ſaid) *Becauſe ſome men who want Legs muſt uſe Crutches, therefore all men muſt uſe Crutches, although they have Legs*, Iſa. 1. 12. Col. 3. 22, 23. Exo. 40. 23, 25, 27, 29. It's ſaid, That the Verſion of the Pſalms in Meeter, lately ſet out by *Barton*, is endeavored to be enforced by a Law upon the Congregations: This will make them unlawful to be uſed in the Worſhip of God, being a Humane Ordinance, and a Will-worſhip.

(*i*) 1 El. c. 2. 35 El. c. 1. *Coke* Entr. *Indictment*, 352, 353.

(k) *Viſcount* Say *his ſpeech in Parliament, concerning form of Prayer.*

39. If a man of weak capacity (and yet not mad, nor out of his wits) being abuſed by ſome ſubtile or cunning fellow (who taking advantage of ſome diſtempered paſſion, or neceſſity of ſuch weak man, or by affirming things that are falſe) be drawn to agree under his Hand and Seal, to give away all he hath, to be kept during his life, (as I know ſeveral perſons did of late) and others for ſome ſmall inconſiderable conſideration, to grant away their Eſtates of good value, as I could inſtance in many particulars: (*l*) one of which, ſold and conveyed an Eſtate of Inheritance in a Tenement, worth 40 *l.* for two ſhillings and ſix pence, and a few fair words. (*m*) Another being troubled in Conſcience for ſin, and in deep deſpair, was perſwaded by his Brother to truſt him with his Eſtate, worth about 700 *l.* (leſt the Owner ſhould make away himſelf, and ſo forfeit it) which he did paſs away to his Brother, without any Declaration or Witneſs of the Truſt. Theſe people coming to themſelves, upon better conſideration, finding themſelves over-wrought, deſire to undo what they have done; but there is no remedy: (*n*) A man ſhall not be admitted to ſtultifie himſelf: And the Anſwer of the Judges in this caſe hath been, They ſit not to remedy fooliſh Bargains; but if a man will give his Bond to pay money for Egge-

(*l*) *This was at* Coton *in Warwickſhire, which was proved before the Juſtice.*

(m) Caſe *of* Hoo *and* Hoo *in* Chancery.

(n) *Finch* Νομοθεσια, l. 1. c. 3. f. 8.

Egge-ſhels, or ſell all he hath for nothing, it's nothing to them; the Law affords no help. But Judges muſt know, That their Office is chiefly to eaſe the oppreſſed: and the contrary practiſe above-mentioned, is againſt the Royal Law of God, the onely Law-giver, 1 *Theſſ.* 4.6. *Weemſe & M.L. Com.* 8. *Exercit.* 4. *p.*202,203. *Ezek.* 45.20. *Rom.* 16.17,18. *Cock Eſſay*, p.177.

(o) (p) *Coke* Inſtit. 2 par. pag. 617. Cuſt. *Norm: de Teſtib.* f.142.a. *Doct. & Stud.* c.6.fo.11. *Finch Νομοτέχνια*, l.1.c. 3.fo.8. *Wingate Law*, c. 40. p.66. n. 19,20.

40. (o) Excommunication, ſuch as was pronounced by the Biſhop, Chancellor, or Official *cum Soc'* is at Common Law a ſufficient matter to plead in Abatement, or in Bar of any Action in Diſability of a mans perſon: This is a Popiſh and Superſtitious Law: the *Scots* have ſuch a kind of Curb upon a man; if he diſobey the Presbytery, he ſhall have no Proceedings in Suits: But this is contrary to that Law, which requires Juſtice to be done alike to all men, *Exod.* 23. 3,6. *Jer.* 5.28. *Prov.* 20. 10. Sir (p) *Edw. Coke* would have this Popiſh Curſe uſed, to enforce men to Obedience, as in Times of Popery.

(p) 35 El.c.1. *Doct. & Stud.* c.6.f.11.a,b. *Poul.* Pax Reg. & Regni. *Cowel* Inſtit. Index Exp. lit. A. *Aſſemblata illicita.*

41. That Law, prohibiting Conventicles or Unlawful (q) Aſſemblies, as it hath been expounded in this laſt Age, is a wicked Law. It ſeems it was intended chiefly againſt the Papiſts; and the Common Law prohibites men to aſſemble together to pluck down a Houſe, or the Head of a Pool; or to claim Common, by cutting down the Fences, or ſuch-like: But the edge of this Law was turned againſt the People of God; who, if they had met together in a private houſe, to ſeek God by Prayer, or to hear a Non-conformiſt Preach, or Repeat a Sermon; This was a (r) Conventicle, or Unlawful Aſſembly: for this they were hurried to Priſon, Fined, Excommunicated, and enjoyned Popiſh Penance, and ſometimes ſtarved in Priſon. And the wicked Judges and Juſtices of the Peace, were but the Biſhops Beadles, receiving the Canons which they made, for Law: and it may be ſo again with the People of God (though, thanks be to God, it be not to be feared at the preſent) if wicked men ſhall hereafter get Power and Authority into their hands: Therefore ſuch Laws as this, ought either to be abrogated.

(r) *The Romanes called the Night-meetings of the* Bacchanale *(which from Superſtition grew to all manner of filthineſs) by the Name of* Conventicles, *more properly then the term hath been uſed in this laſt Age*, Tit. Liv. l.39. p. 1032. & p.1034.k.

or

or amended and expounded, *Acts* 18.29. & 2.46. & 5.42. *Acts* 20.7,8,9. *Joh.*20.19.

42. The like may be said of that Law, whereupon *John Penry* was Indicted, Arraigned, Condemned, and put to Death: What Law it was, no man living can tell; it's said in the Book, That the Indictments are grounded upon the Statute of 1 *Eliz.* Chap.2. (s) And the Title of the first is, *An Indictment for Felony, in publishing Scandalous Writings against the Orders of the Church:* But they are no more like the Statute, then an Egge is like an Oyster: his Offence was, That he dealt too plainly with the Queen, in a Book which he had written; wherein he blamed her, That her Subjects were not admitted to serve God according to the Dictates of their Consciences, informed by the Word of God; and that they were inthralled by Humane Presumptions, and tyrannized over by the Bishops: The honest man was a Nonconformist; for which that Hierarchy became his Enemies, and procured these Indictments, and never rested till they had his Blood; and the Judges were their Beadles and Executioners: (t) He had no more Justice, then *Socrates* had, when the Judges at *Athens* condemned him to be poysoned, Because that he maintained, There is but one God, against their Polytheism: They would not hear *Plato* argue on his behalf. Their blood, as likewise the blood of many others, cries to Heaven for Vengeance. In the mean while, it is to be considered, That if Sir *Edw. Coke*, who Reports the Indictments, were alive, or any like him come in place, such things would be judged Offences at Common Law; for the Indictments charge *Penry*, That he published his Book, with an intent to raise Sedition and Rebellion, *&c.* And upon that point, any faithful Preacher, who speaks but half as much as *Jeremy* or *Nathan* did, may not onely be imprisoned as *Jeremy* was, but may be hanged: Therefore such Laws as these had need to be Expounded, or Declared void, 2 *Thess.* 3.1,2. *Isa.*29.21. *Jer.*26.6,7,11. & 18.19. 2 *Sam.* 12.7,13.

(s) *Coke* Entr. tit. *Indictment*, f.352,353. 1 *Eliz.* c.2.

(t) *Rous* Attic. Ant. l.3. c.3. p.120.

43. That an Heir, having Lands Descending in Fee-simple, shall not be subject to the Debt of his Ancestor, from whom the Lands descend, if he sell the Land

(u) Cuſtom. Norm. tit. querel. de debt. *fol.* 87. *Cook Entr. a. fol.* 126. *b.*

(u) before the Action brought. This is an unjuſt Law; for that there is as much (nay more) reaſon to charge ſuch an heir after the Alienation as before, for then it is aſcertained what the value is, as well as in caſe of an Executor, and what benefit it is to him without hazard, 2 *Kings* 4. 1, 7. *Rom.* 13. 8.

(w) *New Term. Law. verb. Utlawy.* Coke l 6. fol. 80. & l. 7. f. 3. & l. 3. f. 2, 3, 4, 35. & 22 Ed. 3. l. Aſſ. Pl. 33. 29 Ed. 3. l. Aſſ. *Cowel Inter. verb. Utlawry. Wingat Law, cap.* 37. *pa.* 59. *N.* 19.

44. That Lands taken in extent, or ſeized upon an Utlawry at the ſuite of a private man for debt, the iſſues and profits thereof ſhould go to the King, and ſo to the Lord *Protector*, is a ſenſeleſs and unjuſt Law, ſeeing the Creditor ſues for his juſt debt, and is at all the charge. (w) The like may be ſaid of all Utlawries, where men are utlawed in forren Counties, and ſeldome or never hear of the ſuite; the Proclamation grounded upon the ſtatute of 31 *Eliz.* being never duly proclaimed, but returned of courſe; yet the party utlawed, by the Common Law forfeits all his goods and Chattels, and likewiſe the profit of his Lands, until the Utlawry be reverſed: this is a harſh Law, and uſed to inſnare men, and might well be amended, *Jer.* 5. 26. *Levit.* 25. 43, 46, 53. *Iſai.* 58. 6. *Job* 35. 9.

(x) *Clerks Propoſals, ſecond Paper*, 1650. *N.* 9. *Juſtice* Hutton *in a cauſe heard before him.* C. B.

45. (x) That a man indebted upon a ſingle bill without a penalty, payeth the mony at the day, and can prove it by witneſſes, but hath not the bill delivered up, as it falls out many times, nor any releaſe from the Creditor under his hand and ſeal: An Action is brought upon this bill by the Creditor, or his Executor, or Adminiſtrator: The Defendant cannot be admitted to plead that he paid the mony at the day, nor can make any defence at Law, unleſſe he have a releaſe: this is an unjuſt Law, and a wrong to the Debtor, and ſo unlawfull, *Job* 16. 17. *Jer.* 21. 12. *Ezek.* 18. 7. *Prov.* 22. 22.

(y) 26 Ed. 3. l. Aſſ. Pl. 41. 22 Ed. 3. l. Aſſ. Pl. 20. 29 Ed. 3. l. Aſſ. Pl. 68. 40 Ed. 3. l. Aſſ. Pl. 22. Kitchin. fol. 162, 2.

46. (y) That a Wife having right to be endowed, and nothing to be ſaid againſt it, ſhortly after her Husbands death ſhall be a treſpaſſer to her own Child, or any other, who is heir to her Husband, and ſhall have nothing untill ſhee have recovered it by a writ of Dower, which is a tedious way, and the proceeding and Execution thereof chargeable: This is an uncharitable Law, and contrary to that Law of Equity, that a Wife ſhould partake in all her Husbands eſtate, according to his degree and ability; and Dower is one of thoſe three

three things which are ſaid to be favoured in Law; but this is ſmall favour, 1 *Sam.*1.5. *Exod.*2110. *Mal.*2.14. *Eph.*5.33. 1 *Tim.*5.4.

47. (z) That in an Appeal of Murder, the Wife or heir of him that is ſlain, bringing an Appeal againſt the Murderer, may compound for mony, and give a releaſe of the ſuite, and ſo conſequently of the death of the party ſlain: this is an impious Law, againſt the Law of God, *Gen.* 9.6. *Exod.*21.12,14. *Numb.*35.30,31. *Rev.*16.6.

(z) Cuſtom. Norm. tit. Murder. f.75.a Raſt. Entr. Imp. 1574. Barn. in Appel 8. *fol.*43. & in mort. *fol.*46.47,48, 52. *a.*

48. That a Prieſt, or one in holy orders (as he is ſaid to be) ſhould have (*a*) an Exemption and freedom from arreſt upon a *Capias ſi Laicus*, upon a ſtatute-Merchant; and that all other men called *Laicks* ſhould be charged, although the Prieſt were the principall Debtor, and never was any Preacher, but ſome Choriſter or ſuch like fellow: this Law is both unjuſt and ſuperſtitious, as being one of the priviledges of the Romiſh Church, *Prov.* 20.16. and 27.13. and 22.26,27.

(a) *Coke Inſt.* 2 *part*, pag. 4. *Orig. Reg.* fol. 147. Capias ſi Laicus, ſur ſtat. de Acton, Burnet. *See the ſtatute*, 23 *H.*8.*c.*6. *&* 37 *H.*8.*c.*9. Conſ. Norm. tit. Cler. *fol.* 146. *a. Cowel* Inſtir. *lib.* 3. *Tit.* 2. *Sect.* 5. *pag.* 225.

49. That a poor man taken in Execution for debt, and having nothing to pay, by Law cannot be diſcharged, nor (*b*) enlarged for an hour (without loſſe of the debt for ever,) but muſt ſtarve and dye in priſon; whereas in ſome Countries, (*c*) the goods of the Debtor go to pay his debt, and his body not to be Impriſoned: but if you will keep a man in priſon that hath nothing to pay, you muſt maintain him; or elſe let him go out, and by that means men going to the *Indies*, or following their profitable imployments, many times become able to pay their debts, and leave eſtates for poſterity. The Law hath been lately moderated by ſeveral diſpenſations or pardons; but there is yet no certain Law in force in the point, providing equal Juſtice and equity both for Creditor and Debtor, *Matth.*18.26,29, 33. *Iſa.*58.3. *Luk.*7.42. *Coke eſtay*, pag. 166. (*d*) *Pamponius* made a Law to reſtrain the cruelty of Creditors, and forbidding them to lend mony at Intereſt to young men, to be paid after their parents death, leſt they ſhould be deceived or ruined by ſuch borrowing.

(b) Coke Entr. Audita Querela, *fol.*85,86,87. Coke *l.*3. *fol.*44.

(c) Rous Att. Ant. *l.* 3. *c.*1. *pag.*96. Tit. Liv. *l.*8 *p.*301. D. F. *This Hiſtorian ſaith, that the Law was*, 1. *That none ſhould be kept in fetters, but he that was to ſuffer for ſome heynous offence.* 2. *That for lent mony, the goods of the debtor ſhould be obliged.* 3. *That no man ſhould be impriſoned for debt.*

(d) Tacit. Annal. *l.*11. *c*4. *pag.*145.

 50. (*e*) The

50. (*e*) The Writ *de Excommunicato capiendo*, being in nature of an Execution against him that is Accurſed, that is, Excommunicated fourty days; from which no Money will redeem a man, nor any thing elſe, but the ſacrificing of his Conſcience, in doing what the Ordinary will have him do; which is called, being juſtified by his Ordinary: This is a wicked Law; and many have been Impriſoned, and others enforced to leave their Country, for fear of this Execution; this being the worſt thing the Biſhops could do, or procure, without the help of the Judges: 1 *Cor.* 8.12. *Joh.* 16. 2,3. 1 *Pet.*2.19. *Jer.*38.6.

(*e*) 5 Eliz.23. Regiſt.f.65,66 67,70. *Cowel* Interp. verb. *Excom. Capiendo.* N. Term Law, verb. *Excom. Wingat* Law, c.38. p.62. n.19,20.

51. The Law concerning Heriot-Service, where Heriots multiply, inſomuch that if a Tenement be divided into twenty parts, he that hath but a Foot of Land ſhall pay a Heriot, (*f*) that is, his beſt good or beaſt, or the ſecond, as the Cuſtom is: The Lord doth uſually till on the Tenants, and takes 5 *s.* or 10 *s.* for a Heriot, where a man pays Five or Six: but if the Tenant croſs the Lord, he can take the utmoſt, according to the Rule above-ſaid. This is a great Oppreſſion: *Iſa.*33.15. *Exod.*1.13,14. *Levit.*25.46. (*g*) This Tenure was firſt created and payable by Souldiers who had Lands given them by the Conquerours in *England* and many other Countries, long ſince; and is worthy to be abrogated.

(*f*) *Kitch.* f.134 44 Ed.3.Fitz.1 Cuſtom Corley Com'Wal' Caſe between L. *Brook* and *Sewal.* *Cowel* Inſt.l.2. Ti.3. S.31. p.129.

(*g*) *Bodin* Rep. l.1. p.202.

52. That great (*h*) Offices of Rule and Truſt, requiring great abilities, and eſpeciall graces, for the execution thereof, ſhould be Hereditary, or by Succeſſion, ſeems to be againſt the current of Scripture. *Moſes* ſons ruled not, but *Joſhua* ſucceeded; for that ſuch as have been ſpecial Inſtruments to ſave or deliver the people, as *Moſes*, *Joſhua*, ſome of the Judges, *David*, and others, were eſpecially deſigned of Almighty God for Government; and others were appointed and elected by the People; who were to be ſuch as are deſcribed, *Exod.*18.21. *Pſal.*89.20. 1 *Sam.* 10.12,13,21,24. 1 *King.*19.15,16. *Deut.*17.15. It's ſaid of *Auguſtus Cæſar*, That he never commended his ſons to the People for Government, but with this Clauſe added thereto: *If they ſhall deſerve:*

(*h*) 25 H. 8. c. 22. *Cock* Engl. Law, p.4. Jun. Brut. vind. p.49. Laws Geneva, p.12.

Claiming Offices by Deſcent, is condemned and rejected by the French, and ſeveral Decrees made againſt it. In the Records of that Court, one ſolemn Decree appears, Anno 1272.

*Bod.*Rep. l.3.c.5.p.331.

The Iſraelites, before they had a King, in time of Warre choſe them a Chieftain, (ſuch a one as God had ſtirred up to ſave them) and to him they gave Regal power.

Idem, l.3. c.7. p.363.

deserve: Suet. *Tranq. in vita* August. Cæsar. Grot. *Pol. Max. part.* 1. *cap.* 3. *pag.* 20. Godw. *M. A. lib.* 5. *cap.* 5. Willet *Hexa. in Exod.* 18, 21, 22. *Qu.* 21. *Hos.* 1. 11. (*i*) This Succession is judged to be the cause why there are so few good Rulers and Magistrates.

(*i*) Idem l. 4. c. 1. p. 412. *Hawk* Right dom. l. 2 c. 6. p. 37.

53. Tryal by a Jury is no Scripture-way; and, as now things are generally practised, As a man is friended, his Cause is ended. In ordinary Cases, the Jurors are of the meanest of Free-holders, both in Understanding, Credit, and Estate; and, for the most part, such as will give the Bayliffs nothing to excuse them. Anciently, they were to have (*k*) 40 *s. per an.* of Free-hold: afterwards, that 40 *s.* was raised to (*l*) Four pounds yearly. Now in cases of Titles, and other business of any considerable importance, the Jurors are privately dealt withal: and although no more can be proved, but that (*m*) such a man desired them to appear and do their conscience, which is justifiable; yet many times the Jury know the matter in question beforehand sufficiently; and one side or other is confident of the Jury, if such and such leading men appear: and they know who will give them the best reward, or are like to prove their best friends. If the Judges were such as the Scripture holds forth, That they should be able men, men of truth, fearing God, and hating Covetousness, there were no need of such poor-condition'd fellows, as many times they are, to be Judges, as these are, in all matters of Fact between Cause and Cause; which I take to be an offence against God, (the Jurors wanting the qualifications of Judges) that the Judges, and those which ought to be Judges, delegate their power to others, and do not judge all Causes themselves. (*n*) Anciently, there were a Jury of Judges in the Upper Bench and Common Pleas, that is, Six in each Court, who used to meet together to declare the Law. It is the pride of man, to judge onely matters of (*o*) Law, and to let matters of Fact to be tryed, that is, judged by the Jury; who may also try the matter of Law, if they will.

(*k*) 8 H. 6. c. 9. 1 H. 8. c. 8. 23 H. 8. c. 13. 35 H. 8. c. 6.

(*l*) 27 Eliz. c. 6

(*m*) *Cock* Eng. Law, p. 45.

Cock Essay, p. 138.

(*n*) *Plow.* Com. f. 231 a.

(*o*) *Finch* Νομοθεσια, l. 3. c. 1. f. 58 a, b. 9 H. 6. 38. 14 Eliz. 410.

The Jews had a righteous Law from GOD, which was, That the *Nasi*, or (as the Grecians call him) Ἀρχοντα, Prince or King, (for so *Moses* was called) should judge all

(*p*) the

(p) Auguſtus *and* Tiberius *did obſerve this Courſe. Hawk. Right of Dominion*, pag. 55. Ex. Bodin. & Sueto. Tranq.

(q) *This fulfilled that propheſie*, Gen. 49. 10.

Godw. W. A. L. cap. 1. pag. 4. & lib. 5. cap. 5. p. 213. Num. 11. 16.

(p) the hard cauſes, and the Judges ſhould judge the reſt, without any Juries. The *Jews* had the great Court of the ſeventy Judges, or *Sanhedrim*, (q) continued from *Moſes* until Chriſts time, when they were put down by *Herod* the *Askalonite*: they had alſo two other Courts for tryal of ſmaller matters: the *Sanhedrim* although they uſually ſat at *Jeruſalem*; Yet many times they divided themſelves, and did ſit in five ſeveral places, for the eaſe of the people, (although all the Land of *Canaan* which the *Jews* had on this ſide *Jordan* was not above 100 miles in length, and 36 miles in bredth.) The next (r) Court conſiſted of 23 Judges which ſate in the Gates of the ſeveral Cities, every City having ſuch a Court. The third Court conſiſted of three Judges, which judged the ſmaller matters in every Village.

(r) *Godw.* M. A. L. 5. c. 4. pag. 210. 111. 212.

(ſ) *Godw. An.* Rom. lib. 3. Sect. 4. cap. 20.

(ſ) The *Græcians* and *Romans* had their proceedings in cauſes criminal, and civil, and perſonal, much like unto the Jews; and in caſe of life and death, the whole Court of Judges ſate; who were more in number then the Jews *Sanhedrim*: and the Judges (t) were ſworne, where there was a Law, to Judge according to that Law; and where there was none, to Judge according to equity and conſcience. The Chief Juſtice or Preſident amongſt the *Græcians*, was called *Baſileus*, in Imitation of *Moſes*, who was the firſt chief of the *Sanhedrim*. And if the heathen by the light of nature, thought good to receive theſe laudable Cuſtomes and Laws from the people of God, why ſhould we depart from them, being none of thoſe Ceremonial or temporal Laws, which now being abrogated are unlawful to be uſed? *Exod.* 18. 13, 21, 22. *Numb.* 27. 1, 2. *Deut.* 17. 6, 10, 11. *Ezra* 7. 25, 26. *Acts* 25. 9, 10.

(t) Rous Att. Ant. pag. 110, 112, 118, 125, 126.

54. That no man can be puniſhed upon Indictment, for breach of any penal Law, be the matter never ſo plain (except in ſome few caſes lately provided for,) (u) until the matter be found by two Juries, unleſſe the offender will confeſſe the fact; which cauſeth few or none to be puniſhed for wilful breach of the beſt Laws in force, by reaſon that the Proſecutor is forced to be at ſo great a charge to promote the

(u) Finch Νομοθεσια, l. 3. c. 2. fo. 69. *The bill found by the Grand Jury is but an Accuſation.*

the execution of Juſtice; and every petty Errour is ſufficient to overthrow the Indictment; being but a miſtake of a word or ſyllable, it's fatal, being helped by no ſtature of Jeofails: Thus ſuch as are Indicted creep out by one means or other, the Proſecutor or Informer being never favour'd in any Court: and ſeldom any Common Jury will finde for the Proſecutor; it being a common ſaying amongſt ſuch Jurors, that if they finde for the plaintiffe, they ſhall have nothing for their labours. By this means moſt of the penal Laws ſtand as ſo many ſcar-Crows effecting nothing. (*w*) This courſe in proceedings is faulty three wayes.

1. It's too Tedious and chargeable to the Proſecutor.

2. It puts the Jury into the place of the Judge, as before is ſaid.

3. It's an encouragement to Offendors: and in all theſe, againſt the Law of God, *Acts* 24.22,26. *Exod.*18.22. *Eccl.* 8.11.

55. Purgation by *Ordæl* or *Ordeals*, when ſuch as were accuſed of Crimes, were put to their tryal by (*x*) Combate, by fire, by hot water, or cold water; and ſo according as they came off, they were pronounced guilty or not guilty. Concerning the firſt, I have herein formerly ſpoken. That which was performed by fire, was either by taking red-hot Irons into their bare-hands, or walking bare-foot over red-hot plow-ſhares blindfold. That by hot water, was by thruſting the parties Armes accuſed, into boyling water to the Elbows. That by cold water, was by caſting the party accuſed into a deep pit, with a cord under his or her Armes.

In theſe caſes, if the accuſed partyes go over ſeven plow-ſhares (being laid a little diſtance one from the other,) and either tread beſides them, (being blindfolded) or treading upon them with their bare feet, or taking the hot Irons in their bare hands, have no hurt: and ſo if the parties putting their Armes into the hot water, be not ſcalded; or he or ſhee that is caſt into a Pool do ſinke, and then come up again without hurt, they are pronounced innocent and not guilty: but if they are burned by the hot Irons, or ſcalded by the hot water, or cannot ſinke in the cold water; as likewiſe he that is ſlain or vanquiſhed in the combate, in ſuch caſes they are pronounced guilty.

Of

(*w*) *An ineffectual Law, is* quaſi Campana ſine Peſtillo, *A bell without a clapper.* Danæus. Hawk. Right of Dominion, l. 2. c.9. p.65.

(x) Glanvil, l.14. c.1,2. Cow. Interp. verb. Ordæl. Verſtegan. Reſt. decayed Intell. Pa. 50. 51,52,53.

Of theſe Sorceries (for they are no better) invented by *Pagan Conjurers*, the old Law-books ſpeak largely, that the ſame were uſed before and after the Conqueſt, and the (*y*) rude people uſe to try Witches by cold water, as above is ſaid, until this day. And although theſe *Ordeals* be not commonly uſed, yet they may be, there being no Law (as I take it) againſt them; but only a decree of Pope *Stephen* II. which is no binding Law. Theſe ſuperſtitions were never ordained to try or acquit guilty perſons, or ſuch as are queſtioned for their lives; they ought to be tryed by the teſtimony of witneſſes, *Deut.* 17. 6. *Numb.* 35. 30. *Heb.* 10. 28.

(*y*) *At* Hampton *in* Arden, Com. War. *A woman ſuſpected for a Witch, was ſo tryed by the rude people, for which they were indicted,* 1653.

Its ſaid ſome of theſe Trials are taken away by a ſtatute of H. 3. *but ſeems to be very obſcure and doubtfull.*

56. (*z*) That the King heretofore ſhould have had to his own uſe, all ſuch Lands as any ſtranger (borne of parents out of the Kings Allegiance) purchaſed in *England*, is an unjuſt Law, and contrary to that which was uſed of old times, and mentioned in the Holy Scriptures; where men were admitted to purchaſe Land amongſt the heathen, and to enjoy the ſame: *Abraham* bought a Field of *Ephron the Hittite*, and enjoyed it; and *Iſaac* and *Jacob* had it after him, as appears, *Gen.* 23. 17, 18. compared with *Gen.* 49. 30, 31, 32.

(*z*) *Coke* l. 7. Calvins *caſe.* fol. 2, 19, 28.

57. (*a*) That *Anabaptiſts*, ſuch as deny the *Baptiſm* of Infants, are accounted in our Law *Apoſtata's*, and are not capable to make any will, to be Executors, or to receive Legacies; this was not only held to be Law in times of popery, but hath been ſince ſo determined: the ſame is a wicked and unjuſt Law; for if it ſhould be granted, that theſe men hold an Errour about Infants Baptiſm, (which may be queſtioned) yet it cannot be thought to be an Errour in the foundation, or a rejecting Chriſt and the Goſpel, nor ſo bad as to hold that all Infants (although the Children of *Pagans*, unbelievers and excommunicate perſons) ought to be or may be Baptized; becauſe this is contrary to theſe mens own principle, grounded upon that, *Acts* 2. 39. The promiſe is made to you and to your children, and to all that are afar off, even as many (*b*) as the Lord our God ſhall call. But howſoever, this opinion

(*a*) Swinburn Tract. *wills*, par. 2. ſect. 14, 15. & Part. 5. ſect. 3.

Acts 2.

(*b*) *By this Scripture, only the Children of believers, or ſuch as are called, have right to the promiſe.*

cannot

cannot take away the civil right or property of any man, to the things of this life, to which the moſt wicked man living may have (*c*) a civil right. This therefore is an unjuſt Law, *Gen.*14.23. *Numb.*22.30,32. *Acts* 5.4.

(*c*) *The King hath Power and Soveraignty, The property and poſſeſſion of every mans things, yet reſerved to himſelf,* Bodin. Republ. lib. 1, pag.110,111.

58. The like Law is concerning (*d*) Hereticks, (who are ſuch in our Law, as deny any Article of the Creed, if it be but the locall deſcention of Chriſt into Hell,) or ſuch whoſe opinions have been condemned by a General Council, as the Papiſts will tell us the Proteſtant reform'd Religion hath been by the Council of *Trent*, and other Popiſh Conventicles; and that the Doctrines of our Religion have been condemned by ſeveral Acts of Parliament, under the name of *Lollardries*, the Profeſſors whereof Sr *Edw. Cook* accounts Hereticks: theſe are likewiſe uncapable to make any will, to be Executours, or receive any legacy. The beſt of the people of God in *England* are of this Religion, holding the ſame faith with the followers of *John Wickliff*, who were a buſively called (*e*) *Lollards*. By this we may ſee, what lets, but that the faithfull ſervants of God might be waſted and deſtroyed as in former times? not our Laws, but our Magiſtrates, for whom we are to bleſſe God: in the mean while, this is a wicked and cruel Law, both againſt Religion and Common right, 1 *Sam.*25.2,8,11. *Rom.*13.7. *Gen.*14.23. *Numb.*22.30,32. *Rom.*13.7.

(*d*) *Coke*, l.5. fol.25.

2 H.5. cap.7.

Swinburn. Treat. *Wills*, pa.2. Sect.14. & pa.5. Sect.2 Doct. & Stud. f.115.b. c.29.

(*e*) *White way to the true Church.* Sect. 50. pag.393.

59. Tenure in (*f*) free Almes, when Lands are granted to men for to ſay prayers, *Maſſes*, and other Divine Services (as *Littleton* calls them,) for the Souls of the Donors, and for the Souls of their Fathers Children, or Anceſtors: theſe grants uſually were made to Monaſteries and Hoſpitalls, and alſo to Deanes and Chapters, and to the parſons of Churches. But this Tenure is Impious and Superſtitious; and yet the ſame is both favourably ſpoken of, (*g*) and commended by the

(*f*) Plow. com. Sharringtons Caſe, f.305.b. 7 & 8 Eliz. Littleton Fran. Almoig. fol.30,32. Wingat. Law, cap.7. pa.13. N.18.

(*g*) Coke com. Littleton. l.2. cap.6. Sect.134,135. A learned Civilian *ſaith of ſuch Tenants, who hold in free Almes, that* pro donatoris & ſuorum, tam vivorum quam mortuorum Animis apud Deum orationibus, & Divinis Officiis Intercedant. *The King might, and the Lord* Protector *may make ſuch a grant at this time.* Weſtm. 3. *Cowel* Inſt. l.2. T.2 S.24. P.125. Impr.1630.

Lawyers in our Law-books, ſince Queen *Maryes* time, that Popery was aboliſhed in ſome meaſure. It ought to be taken away as Idolatrous and Superſtitious; the rather, for that the mindes of men are too prone and ready to be led aſide to ſuch Superſtitious Vanities, and Will-worſhip, repugnant to the Law of God. Sir *Edward Coke* in countenance of ſuch Superſtitious Grants, hath this paſſage: *Nunquam res humanæ proſperè ſuccedunt, ubi Divina negliguntur*: But this poyſoned Divinity ought to be condemned, and ſome Law provided againſt ſuch Superſtitions, *Iſaiah* 1, 12. *Rom.* 14. 23. & 10. 8. *Matth.* 15. 3, 6. *Coloſſ.* 2. 8.

60. That where Lands come to the Lord of the Fee, by Attainder of a Traytor or Felon, the King hath (*h*) *Annum diem & vaſtum*: The Law in this caſe is, That the King ſhall utterly waſte the Inheritance, by plucking down Houſes, cutting down Trees, Ploughing up Meadows, *&c.* and at Common Law, ſuch was the Judgement in an Attaint upon a falſe Verdict. This is ridiculous Law, and a prejudice to the Common-wealth; contrary to that frugality which our Saviour enjoyned, touching the very Fragments which remained, after he had fed four thouſand, and five thouſand perſons with meat which coſt nothing, and yet he would have nothing loſt or ſpoiled, *Joh.* 6. 10, 11, 12. *Mar.* 8. 8, 9. *Mat.* 15. 37, 38.

(*h*) *Coke* Comment. *Littleton*, *Reliefs*, l. 3. ſect. 514. fol. 294. *Wingate* Law, c. 19. p. 30. n. 13. *Cowel* Inſtit. l. 4. Tit. 18. ſect. 10. pag. 319. Idem Index Expoſ. Litera a, u. & l. 4. Tit. 18. ſect. 45. p. 341.

61. That there ſhould be no (*i*) Averment againſt a Record, is a hard Law, and may at ſome times prove unjuſt; conſidering what men of mean Credit, & leſs Conſcience, many times have the keeping of them. It is neceſſary general Credit ſhould be given to Records; but yet where juſt cauſes of Suſpition and Corruption may appear, it's neceſſary the validity of ſuch Records be put to Tryal: The contrary is a means to countenance Perjury and Forgery; and therefore this Rule of Law would be Expounded and Amended, for Preſervation of Truth and Juſtice, *Iſaiah* 8, 1, 2. 2 *Cor.* 13. 1. *Ezra* 4. 15, 19.

(*i*) *Littleton*, l. 3. c. 11. ſect. 691. *Coke* Com. *Littleton*, *Remitter*, fol. 362. b. *Wingate* Law, c. 22. p. 33. n. 11. *Cowel* Inſtit. Jur. Angl. Index Expoſ. litera *R.* Recordum.

4. 15,16. compared with *Ezra* 6.1,2,3. *Exod.*23.7.

62. That the Widow of the Kings Tenant of Lands, to which the King is intitled by Office held of him in Chief, before she could have her Dower assigned by a Writ *de Dote assignanda*, should take her Oath in Chancery, Not to (*k*) Marry without the Kings License: This is an Unreasonable Law, and was one of those Badges of Slavery attending Knight-Service-Tenure, which was brought in by *William the Conqueror*; and is contrary to that Law of God which gives liberty to all persons to marry (onely *in the Lord*) at their own will and pleasure, 1 *Cor.*7.2,9,28,29. *Gen.*2.24. 1 *Tim.*4.1,3.

(k) *Wingate* Law, c.38. p. 60. n.4. n.6.

63. The King might (notwithstanding the Statute taking away Sanctuaries) appoint any place to be (*l*) a Sanctuary or Safeguard for any Offenders flying thither, (although they had committed Murther) and such Offenders once getting to such a Sanctuary, shall not be enforced to answer any Indictment or Accusation for the fact, but may confess the fault to the Coroner, and abjure the Realm. This is an impious Priviledge, and the Oath unlawful, as hath been before said, and ought to be altered, for that all men ought to be punished for great Offences, 1 *Kings* 20.42. *Prov.* 28.17. *Numb.* 35.16,19,31. *Rom.* 13.4. (*m*) These Sanctuaries were ordained by Pope *Boniface* the Fifth, (*n*) and are still available, if the Lord Protector please; and in our Law, things made Holy or Sacred, are not to be violated.

The Heathen Romans *ordained Sanctuaries, and were a grievance to the State*, Tac. Annal. l.3. c.7. p.75.

(l) *Wingate* Law, c.48. p.68. n.48. & c.40. p.70. n.69. n.70.

(m) *Symson* Church-Hist. Cen.7. p.364.

(n) *Res Sacræ sunt, quæ rite & per Pontifices Deo consecratæ sunt, veluti ædes sacræ, dona, quæ administerium Dei dedicatæ sunt; ut Calices, Cruces & thuribula: Item loca sacra sunt Ecclesiæ, Capellæ, cœmeteria, &c.* Cowel *Inst.* l.2. Tit.1. sect.8. p.81. Impr. Anno 1630.

64. That an Utlawry should be (*o*) a Judgement in it self for Felony, is a hard and unjust Law, because a man may be Indicted and Utlawed, and never hear of it. It is a worse Law then the Heathen *Romans* had, which was, That no man was to be Condemned nor Judged, until the Accuser and Accused came face to face: and it is contrary to those Laws of God, which require all persons accused to be

(o) *Wingate* Law, c.46. p. 86. n.21.

judged upon the Teſtimony of Witneſſes, 2 *Cor.* 13. 1. *Acts* 25. 16. *Numb.* 35. 30. *Deut.* 17. 6, 7. *Joh.* 7. 51.

65. The like may be ſaid of that Law, where a man may be judged to be branded, diſmembred, and his life in danger, for a few unadviſed or raſh words; as he that ſaid merrily, *He would make his Son Heir of the Crown*, meaning his Houſe, which had that Sign. The like raſh words (uſed by one *Burdet*, a great Gentleman of *Warwickſhire*) were ſaid to be the cauſe of his Death. This Severity is againſt Gods Word.

The Romans puniſhed words very ſlightly, Tacit. Annal. lib. 1. cap. 15. pag. 29. *And capital Puniſhment for words is charged as a fault*, Tacit. Annal. lib. 2. cap. 12. pag. 50.

66. The greatneſs of the body and bulk of the Law in force, in the next place, is a great Grievance to the Commonwealth: (p) The Laws ought to be ſhort, eaſie, and few. This I touched in the firſt Chapter; where is recited, wherein Sir *Ed. Coke* ſaith the Text of the Common Law is contained: whereunto I refer the Reader; deſiring it may be further conſidered, what an uncertain thing it is to know the extent thereof. I ſet it down poſitively, That no man by reading thoſe Statutes and Books which Sir *Edward Coke* ſpeaks of (as containing the Text of the Law) can tell what the Law is in an hundred particulars, wherein there have been Judgements and Opinions given for Law, of which hardly any thing can be found, in thoſe old Statutes and Books. That this is ſo, there needs no other proof, but the Statutes made within the laſt 120 years, and Sir *Edward Coke*'s own Reports: Inſomuch that it's certainly believed, That a man may know more of the Law, by reading the Statutes and Reports of this laſt Age, then by reading all the old Books, which comprehend many Volumes.

(p) *Grotius* Pol. Max. par. 1. c. 4. p. 34, 35.

67. (q) The whole Law (I mean the Statutes, Old Books, Entries, Regiſters, and Year-books) cannot be read over under three or four years, with any deliberation; the Books being ſo many, that they at an ordinary rate come to above twenty pounds price; whereas the Text of the Laws of *Normandy*, are contained in about forty leaves of Paper, in

(q) *The more Laws there be, the more ſuits there are about the Interpretation thereof. France was ſaid to have more Laws and Cuſtomes, then all the Neighbor-Nations, and ſo alſo more Suits then all Europe beſides, which grew through the heaps of written Laws.* Bodin. Rep. 16. c. 6. p. 766. *See the Book called* Conſuetud. Normand.

in folio. The Laws of *Athens* were no more then might be read over in one day: and every year upon the (r) Eleventh day of their Moneth called *Hecatombæon*, which is *July*, their Laws were read over in the publick Assembly; which being done, Proclamation was made, and then it was demanded, If those were Laws enough for the Senate and the Commonwealth: and no new Law was easily received by the Senate or the People. (s) The *Romans* Laws were likewise but few; (t) the chief was, the Law of the Twelve Tables, which they had from *Greece:* and their proceedings in promulgation of Laws, were much like theirs of *Athens*. And to mention no more, the (u) whole Body of the *Jews* Laws, both Moral and Judicial, which onely concerned Distributive Justice, are comprehended in three Chapters and eight Verses of the Book of *Exodus*, except a very few, dispersed in the three last Books of *Moses*, which were added upon special occasions. (w) These Laws the *Jews* knew most exactly; but we know not our Laws (as one hath lately written) by reason they are not set down in a Body, nor determined plainly, but left doubtfull, and inshrined in the breasts of the Judges; and few but they, may take upon them to expound them. This I account a great Oppression, *Exod.* 20. & 21. & 22. & 23. to the 9 verse. The Laws of *Geneva* are contained in about five sheets of Paper: See the Book printed in English.

(r) Ἐκατομβαιών, *Rous* Att. Ant. 13. c. 1. p. 101.

(s) *Amongst the Romans, ten men were appointed to Collect the best out of their own and the Laws of other Countries; and out of them they composed the* 12 *Tables. The Historian condemns the multitude of Laws, and chargeth it as a corruption, that Laws upon Laws were multiplied; and saith, That persons were chosen to salve the intricate Quirks of the Laws.* Tac. Annal. l. 3. c. 5. p. 71, 72.

(t) *Tit. Liv. l.* 3. p. 108. g. 109. a. 112. h.

Raleigh Hist. l. 2. c. 4. sect. 15.

(u) *Willet* Hex. in Exo.

(w) *Cock* Essay, p. 111, 134, 136

68. The (x) great distinction between the Clergie and the Layty (as they are called) in Conformity to the Popes Laws and Constitutions, is a thing superstitious, oppressive to the Nation, and tends to the advancement of the *Roman* Power, meerly Antichristian. Hence the Archbishops and Bishops (being set above the Dukes, Earls, Barons, &c.) with their Attendants, inferiour Priests and Deacons, and other Ecclesiastical Orders, made (as it were) another Common-wealth, free

(x) Magna Charta, c. 1. Coke *Instit.* par. 2. in Westm. 2. c. 33. p. 431, 432.

See the Grants to the Templers Cestercians *and* Hospitallers.

Concil. Vienna *dissolved the Templers*, Anno 1311, *and their Lands given to the Hospitallers*, 17 Ed. 2. *Coke* ut supra.

The Clergie *as they are called, still claim to be free from payment of Constables Levies; and some of the Judges and Justices allow it.* At W. Sess. Mich. 1655.

from

The Priviledges granted to the four great Orders of Monks in England, are largely discoursed of, and their particular Charters and Immunities rehearsed in the new book called Monasticon Anglicanum: *which is to be sent to* Rome *by* J. A. *and cannot but be there highly esteemed. It is a famous Monument of Idolatry.*

from Secular Services, Taxes and Payments, and served chiefly to maintain a Faction against the Common-wealth of the Laity, by upholding the State of Antichrist against the Temporal Power. Now under the Gospel, all men are in one condition; and the Lords Lot (Clergie) are his People in every calling, without respect of persons, *Isa.* 61. 6. 1 *Pet.* 2. 9. *Rev.* 5. 10. *William Laud*, late Cardinal of *Canterbury*, had a design on foot, to make a perfect distinction between these two Common-wealths: and to the better strengthning of his Party, he had an improbable Project, to erect again the Old Monasteries, at least such as there could be any colourable pretence to seize into the Kings hands: And several persons (whom I could name) were imployed to finde out, and report the Foundations and Priviledges of these Monasteries. But blessed be God, who hath prevented these Superstitions. The Law had need to be changed in this point of Distinction.

CHAP.

CHAP. XII.

That the Practick part of the Law, as it's now in use, is in many particulars sinful, and repugnant to the Law of God, and an oppression to the people.

1.

COmmon Recoveries for assurance of Lands, (being truely called (*a*) Fined recoveries) are nothing else, but a pack of lyes: And a colloquie at the Bar, and the entry accordingly, of persons acting, and things done, but nothing really (except the parties coming to the Bar, to do they know not what:) This is meerly a device or fiction to deceive (and screw mony from) the people: the very fees come to almost four pounds; besides the fine upon the Alienation, which is according to the value of the Land taxed by the Commissioners: if above 40 shillings by the year, it may be from 6 shill. 8 pence to 20 pounds, lesse or more: All which might be saved, if all mens estates were made fee-simple, and the *Statute de Donis Conditionalibus* repealed; or that the making of a Feoffment, which is done by livery or the Inrolment of a Deed, might discontinue the intail, and Bar the Remainders. In the mean while, this Common recovery, in regard of the expence, is an oppression; and the formality, or rather subject matter of it, being nothing but lyes, (whether *Jocosa*, *officiosa*, or *perniciosa*) is against the Law of God, *Col.* 3. 9. *Levit.* 19. 11. *Rev.* 21. 8. *Rev.* 22. 15.

(*a*) Doct. & Stud. c. 32. dial. 1. fol. 56. a. *Cowel* Inter. verb. *Recovery*. *Cowel* Instit. Index Expositor. Litera *R*.

2.

That Errours in Judgments and proceedings in the Upper-bench, (the Action being brought by Original,) should not be heard and determined but before the (*b*) King, or Lord *Protector*, and Lords in Parliament, seems to be a hard Law, and at best is a Tedious and expensive way, and so

(*b*) *Wingat Law*, cap. 47. pag. 89. N. 10.

so an oppression to the people, and against the Law of God, *Ezek.* 18. 8. 1 *Thes.* 4.6. *Isai.*33.15. *Prov.*22.16.

3.

(c) Intails upon the heirs males of a mans body, with remainders over to brothers, and after to strangers of the name, to the disinheriting of ones own Daughter, having no Son, is sinful, and against the Judgment of Almighty God, immediately given in the case of *Zelopheads* Daughter, declared with an emphatical addition, That this shall be a Law of Judgment, &c. That if a man have no Son, his inheritance shall go to his Daughter. And the same is a Law of Common equity (not one of those Judicials, which only did binde the *Jews* in their own Land, but) dictated to every man by the Law of nature, which teacheth that a mans own child, being part of himself, is more dear and near to him then a stranger: and hitherto is that to be referred; He that provides not for his own, and those of his own House; first his own Wife, then his own Children, and then his Servants, as the rest of the household; such a one hath denyed the faith, and is worse then an Infidel. Then are many of the Nobility and Gentry worse then Infidels, whose inheritances (upon such an Atheistical or Heathenish opinion, as the builders of *Babel* had, to get them a name least they should be scattered) are turned from their Daughters (to strangers) and little or nothing left for them: upon consideration of which, a wise and Religious Judge once said, I would surely make such mine heir, whom God makes mine heir; the contrary practise is against the Law of God and nature, *Numb.*27.7,8. 1 *Tim.*5.8.

(c) *Westm.*2. c. 1. Stat. de Donis Condit. 27 H.8. c.10. *Statute of Uses, Chudlyes Case. Coke* l.1. fol.121.

There is a Custome in Ireland, *that all Lands which have not come to the Kings hands, (by surrender, escheate, Attainder or forfeiture) The eldest Son of the house shall enjoy the same during his Life, and then the second, and third, (if there be so many Brothers) before the heir in Lineal descent. This is called the Custome of* Tanestrie: *and the same grew by reason of their Civill warrs, not only the greatest against the greatest; but even every Baron and Gentleman one against another. Therefore they left their Successors of Age to defend their territories.* Davis *Report. case* Tanest. Ra. Histor. lib.2. cap.4. S. 15.

4.

In a Replevin, no man living knoweth what is the general issue to be pleaded by vertue of the last Statute, and in some

ſome caſes there can be no (*d*) Judgment to have the Cattle returned: and when ſuch Judgment hath been given, and the Cattle taken upon a return *habend.* he that took them, and obtained the Judgment, can neither uſe them as his own, nor ſell them; nor can the former owner have them again, but either the Taker muſt keep them at his own charge, until the owner will redeem them, or they muſt dye in the *Pynfold:* and then the Avowant, who firſt diſtreyned, may diſtrayn again, and go to ſuite afreſh, and ſo be put to a circuit of Action, which the Law, in other caſes doth diſallow. This is a fooliſh and ridiculous Law and againſt Common right, and ſo againſt the Law of God: every one ought to have recompence in his ſuite, where the Law paſſeth for him, *Lam.* 3. 36, 59. *Amos* 5. 24. 1 *Kings* 10. 9. *Iſai.* 59. 14.

(*d*) *This is agreed by the Protonotaries of the Common-Pleas, and the practiſe is accordingly. Finch* Νομοτ'χνια, lib. 1. fol. 14.

5.

The practiſe in real and mixt actions, occaſioning (*e*) many Delayes, by Eſſoynes, Adjournments, Veiw, Counterpleading, Colour, and Dilatory pleas, is a great oppreſſion, by reaſon of the delay, and unreaſonable expence, beſides the nicety, and thereby uncertainty in the proceedings, where by miſtake of a word, ſyllable, or daſh with a pen, or coming to adjourn an hour too late, the Cauſe may be loſt: this is an oppreſſion, and a meer Trap to catch men, and an occaſion of much injuſtice: for who will yield to any man his right, where he hath hope to foile his adverſary by any ſuch trick, or weary him at Law? *Job* 22. 10. *Luke* 18. 4. *Iſai.* 59. 14.

(*e*) Stat. 51. H. 3. *concern. dayes in Real. Act.* and Stat. 51. H. 3. *concerning dayes in* Dower.

6.

Trials by *Niſi prius* in perſonal Actions, begun in the Courts at *Weſtm.* where the plaintiffe to have amends for a treſpaſs or battery, for which five ſhilling would ſatisfie him, muſt ſpend before he can have Judgment neer eight pounds, and the Defendent about half as much, although to his ruine; and he muſt pay the plaintiffs charges and damages, (which is all in nature of Damages) or lye in Gaol: this is a grievous Law, and not to be ſuffered; but rather ſuch Courts

This is Common in every mans Practiſe, and needs no Proof.

of Record are to be Cherished, where a cause may be tryed for 30 or 40 shillings: this were more for ease of the people, and more agreeable to the Law of God, 1 *Sam.* 12.4. *Isai.* 58. 6. *Isai.* 5.7. and 33.15. *Zeph.* 3.1.

7.

Common Experience shews this to be true.

The like and much more may be said concerning tryalls at the Bar, which cannot be tryed, (if the Jurors come but two dayes Journy) under an hundred marks, and commonly there is much more spent. This is a horrible oppression; and such courses make poor men affraid to sue for their right, and great men to Trample upon the poor; the same is a crying offence against God, *Psal.* 73.8. *Ezek.* 18.8. 1 *Thes.* 4.6. *Prov.* 22.16. *Isai.* 33.15. *Psal.* 12.3.

8.

That a man being after some sleight manner assaulted with a small stick, (which it may be the party assaulted, wayting for such an advantage by provocation, did procure) falls upon him that assaulted him, and beats him so sore, that he puts him in danger of death: the party so beaten brings an Action of assault and battery, *&c.* the Defendant either pleadeth *Son assault Demesne*, or pleads the general issue, and by power of the last Act gives this special Justification in Evidence. Then the only (*f*) question is, who began the affray: and if it be proved that the plaintiffe who was so grievously beaten, gave the first assault, then he loseth his suite, and must pay the Defendants Costs. In point of Conscience, it ought to be considered, aswell who had the hurt and losse, as who began. This is an incouragement of private revenge, which is term'd by that learned Sr. *Francis Bacon*, a kind of wild Justice, which is to be weeded up, *Rom.* 12. 19. *Prov.* 20.22.

(*f*) *Coke* Entr. fol. 644. *a.*

Lord Bacon *Essayes, Title Revenge.*

9.

This is likewise the Common Practise.

The same may be said of that Law, (as it is now in practice.) If upon a slight occasion first offer'd, one man kill another; The Jury usually find such a man guilty of Manslaughter in his own defence. I confesse the Ancient Law hath

hath been, that no man could be ſaid to kill another in his own defence, if he could have eſcaped from the party: and inſtances of ſuch inevitable neceſſity are ſhewed, where a man is purſued to a River or a Wall, or as far as he can go, and then muſt either defend himſelf by offending his adverſary, or yeild to be ſlain: In ſuch a caſe it's better to kill then be killed, and Juſtifiable by all juſt Laws whatſoever; but the practiſe is after another faſhion, as above ſaid, and againſt the Law of God: there is a difference to be put between him *qui infert Injuriam*, and him *qui propulſat Injuriam*. *Weemſe*, M. L. *Com.* 6. *Exercit* 7. pag. 115. 2 Kings 6. 23. *Rom.* 12. 19.

10.

The practiſe of ſuing a man to the Exigent, where there are four Writs, *viz.* the Original, *Capias*, *Alias*, and *Pluries*; which ſhould every of them have fifteen dayes at the leaſt, between the Teſte and Return, and were anciently return'd by the Sheriff, from whom regularly the Defendant might hear of the ſuite. But now as the practiſe is, in the firſt week of a Term, theſe four Writs may all be ſued forth, filed, and the Exigent and Proclamation taken out in a day, or an hour: And in this caſe, if a poor man be ſued for a debt of forty ſhillings, or any petty treſpaſs, he ſhall never hear of it until the plaintiffe hath ſpent 15. ſhillings 7 pence: and if ſo ſoon as the Defendant hears of it, he pay the debt; or agree the treſpaſs, it muſt coſt him that 15 ſhillings and 5 pence, and 5 ſhillings more to withdraw the ſuite. But if the Defendant never hear of the ſuite, (as it oftentimes falls out) until he be Utlawed, the Reverſal of the Utlawry coſts him above thirty ſhillings: and if he be taken (upon the new Orders) he muſt procure a *Superſedeas*, and reverſe the Utlawry by a writ of Errour, which will coſt him above 40 ſhillings: and all this is ſaid to be for the benefit of the Court, that is, the inriching of the Officers. A Summons with a penalty in *Terrorem*, like a *Subpœna*, were a more equal juſt way; for that experience ſhews, that where one of forty fails to appear upon a *Subpœna*, there is not one of five, who appears upon common Proceſſe. This

This is every Terms Practiſe, and obſerved both by the officers and practiſers.

ought to be amended, as an oppreſſion of the people, *Iſai.* 33.15. 1 *Theſ.* 4.6.

11.

The Law impoſing the forfeiture of a mans goods and Chattles, for flying for felony, (*g*) as it's now in uſe, is an unjuſt Law. Suppoſe a ſimple man being queſtioned, or ſuſpected of felony; or if ſuch a thing be pretended, and the poor man unwilling to fall into his Enemies hands, fearing their power or malice, or being fearful of Impriſonment, fooliſhly runs away and abſents himſelf; ſome ſhort time afterwards yeilds himſelf (being better adviſed) and upon his tryal is acquitted; but upon the evidence he is found to fly for it: in this caſe he loſeth all his goods. There is no reaſon that a poor man in ſuch a caſe ſhould loſe all his goods and Chattles, if he be not guilty of the felony: his flight was but to ſave himſelf; and every creature naturally ſeeks its own preſervation: if the poor man had reſiſted the Officer, or thoſe who purſued, there had been ſome colour to puniſh him; and ſo if he had been guilty of the felony, he muſt have ſuffer'd the Law: But the loſſe of all a mans goods and Chattles, (if he had five-fold as much as was ſtollen) might be too great a puniſhment, if he ſhould be found guilty; much leſſe ſhould he loſe all for flying, when he is not guilty, 2 *Sam.*15.11. *Rom.*15.1.

(*g*) *Every Jury which paſſeth upon a felon, hath this in charge: although they finde him not guilty, yet they are to enquire and preſent, whether the felon did flie for it; and then what goods and chattels he had,* &c.

12.

That any perſon charged with any offence touching his life or member, ſhould be convict upon the Teſtimony of a ſingle witneſs, is an offence againſt the Law of God, and contrary to all Rules of Scripture. The civil Law is in this point more agreeable to the Law of God, and ſo likewiſe was the Law of *Normandy*, which determine the Teſtimony of one ſingle witneſs inſufficient to charge any man in the caſes aforeſaid. And the like may be ſaid of a ſingle evidence in perſonal Actions, (where there are not other circumſtantial proofs, evidencing the matter in queſtion,) that no Judgment is to be grounded thereupon, *Deut.* 17. 6. 2 *Cor.* 13.1. *John* 8.17. *Matth.*18.16. *Heb.*10.28. *Numb.*35.30.

This is likewiſe admitted in all Courts. If the Jury will believe the witneſs, a ſingle witneſs is ſufficient. Conſ. Norm. Tit. Privil. Crucis. *fol.* 139. 2.

13. The

13.

The like may be ſaid of the tryal of men charged with felony or other ſuch like Crimes: the Priſoner hath not liberty either to have witneſſes ſworn for his defence, to clear him; nor admitted to have any Counſel, (*h*) if he deny the fact, although there be a Lawyer as Eloquent as *Tertullus* againſt him; unleſſe he come in upon his traverſe, that is, if after the Bill found, and preſented by the Grand-Jury, the Priſoner can provide three pounds or more, to pay the fees of the traverſe, he ſhall be allowed Counſel for his mony; but if he be a poor Thief, and hath no mony, he ſhall have no Counſel; however, the Judge will hear his witneſſes without oath: But all the witneſſes who are to give evidence for the Common-wealth are ſworne: and if it fall out (as ſomtimes it doth) that a witneſs ſworne, ſpeaks any thing material to clear the Priſoner, eſpecially if he do any whit contradict the Teſtimony of any other brought againſt the Priſoner, then the Court uſeth to be in an (*i*) heat, and great inquiry is made how ſuch a witneſs came to be ſworne: and if it appear, he was brought in by any Sollicitor or friend of the Priſoners, then ſuch a man is checked, or threatned moſt commonly; and the Priſoner muſt endure all this Injuſtice, (for it is no better,) nor can any man defend it in *foro Conſcientiæ*, for every man ought to have as much favour, & means allowed him to clear himſelf, as his Accuſer hath to charge him; and ſomewhat more, according to the rules of Scripture. The contrary was uſed againſt our Lord Chriſt, *Mark* 14.59,63. *Luke* 22.71. *John* 3.11. *Job* 29.16.

(*h*) *Wingat Law*, cap. 40. p. 70. N. 64.

(*i*) *This I obſerved to be very uſually practiſed by the Judges, as a piece of high injuſtice: but ſince the late warrs the Judges are more juſt and indifferent, and moderate in this point.*

14.

The payment of fines upon Writs of (*i*) Covenant, (as well

(*i*) *Sr* Edward Coke *ſaith, that the reaſon of theſe fines, was becauſe the King loſt the benefit of the Amerciaments, which he ſhould have had upon the judgment or nonſuite.* Coke Inſt. 2 part. *in* Stat. mod. Levand. fines. 18 Ed. 1. pag. 511. *So that fines were then the Concluſion of ſuits; but now they are uſed to prevent ſuits, and to ſettle eſtates, about which then was no controverſie. And for other original Writs, they are the beginnings of ſuits, and therefore ought to be had without fine, there being no Amerciaments loſt thereby. The fine upon the Writ of Covenant,* prolicentia concordandi, *is ſaid by* Sir Edward Coke *to be the Kings ſilver: which is a groſſe miſtake, for that is paid, beſides the fine and poſt-fine upon the ſame Writ.* Coke Inſt. 2 part. pag. 511.

as

as other fines upon Original Writs,) are an oppreſſion, and a late exaction, and ſeem to be contrary to *Magna Charta*, *Doct. & Stud. Chap.*8. *fol.*18.6. Fines ought to be paid for Offences, as a Mulct or Puniſhment: but it is in no ſort any Offence, to leavy or ſue forth a Fine for Aſſurance of Lands purchaſed, nor to ſeek for remedy againſt wrongs by Suit in Law: Theſe Fines were all taken away by a Law (as I take it to be) but Fines upon Writs of Entry and Writs of Covenant, are ſince ſet up again, upon a meer pretence, That the Fines themſelves may be erroneous, for want of payment of the Money, called, *The Kings Silver*; to which, the Fine upon the Alienation hath no affinity or relation, that Silver being anciently but Ten-pence, but this is at leaſt Six ſhillings eight pence, if the Lands be above Forty ſhillings by the year; and it may be twenty ſhillings or twenty pounds, being regularly the Tenth part of the yearly value, as the Lands Conveyed are rated by the Commiſſioners; and the poſt-Fine is half as much more. The like may be ſaid of *Damna Clericorum*, which is the Tenth part of the Damages clear recovered in any Action; and was anciently paid to the Prieſts, who were Clerks in all Courts; but ſince was allowed to the *Protonotors*, and their Clerks: This being a kinde of Tything, had a Superſtitious beginning; but is lately diſcharged, as all other Fines are, but thoſe upon Writs of Entry and Covenant, which yet remain as an oppreſſion. If it be ſaid, That this is neceſſary, as part of the Lord Protectors Revenue: It is to be conſidered, That the want of that, is to be ſupplied by payment of (*k*) Taxes, Toll, (*l*) Tribute or Cuſtome, allowed by our Saviour and the Apoſtle to be paid to the *Roman* Heathen Emperors, *Mat.*22.21. *Rom.* 13.6,7. *Luke* 20.25. that is, an indifferent payment, by juſt proportion of Taxing: But this now uſed by way of ſuch Fines, is a meer Oppreſſion or Puniſhment of particular men for no Offence, *Ezek.*45.8. *Amos* 4.1. & 5.12. *Jam.*2.6. *Iſa.* 52.45.

(k) *Tit. Liv.* l. 39.p.1051. f. & 1052.G. *Thoſe taxes are moſt neceſſary, which are impoſed upon curioſities and dainties; as rich Perfumes, cloth of gold and ſilver, Silks, Cypreſs, Laces, rich Colours, Pearls, Diamonds, and other Precious Stones; all kinde of works of Gold, ſilver, and enamell'd Coaches and Chariots, &c.* Bodin. Repub. l.6. c.2. p.670,671. *Hawk.*Dom.l.2.p.111. (*l*) Rom.13.6. *Taxes are as proper for upholding of Soveraignty, as the Law it ſelf,* Bod.Rep l.1.c.10.p.177. Jun.Brut.vind.cont.Tyra.p.85,86.

15. All

15.

All manner of Pleadings and Proceedings both in Law and Equity, are ſtuffed with falſhood and lyes; and of neceſſity muſt be ſo, whileſt the Law continues as it now is. In the Upper Bench, all the Pleadings are ſaid to be before the Lord Protector himſelf; and ſo were ſaid to be before the King himſelf, although he never came into the Court. The Defendant is alwayes ſaid to be in the Cuſtody of the Marſhal of the Marſhalſey, although he never came there; but *John Doo* and *Richard Roo* were (in conceit) his Manucaptors. In an Action at Law of Treſpaſs for Aſſault and Battery, brought for a box on the Ear; the Plaintiff declares, That the Defendant with Force and Arms, *viz.* with Swords, Staves and Knives, did make an aſſault upon him, and did him beat, wound, and evilly intreat, ſo that it was deſpaired of his life. In an Action of Treſpaſs, for driving Sheep over a plowed Land; the Plaintiff declares, That the Defendant with Force and Arms, his Cloſe, *&c.* did break, and his Graſs to the value of Forty ſhillings there late growing, with his feet in walking did tread down and conſume; And his other Graſs there late growing, to the value of Forty ſhillings, with his Cattel, that is to ſay, Horſes, Oxen, Cowes, Hogs, and Sheep, then and there lately feeding, did eat up, tread down, and conſume. In all caſes, where the Plaintiffs by Law were to put in Pledges, and where the Defendant put in Common Bayle, or where the Defendant is to be ſummoned, *John Doo* and *Richard Roo*, *John Den* and *Richard Fen*, and the like deviſed Names, are ſaid to be the men. The Returns of moſt Writs are falſe, That the Defendant is not found, when he was never looked for, nor the Writ in the County whither it is directed; but purpoſely ſo returned, that the Plaintiff may have an *Alias*, and ſo a *Pluries*, to the Exigent. Upon a *Habeas Corpus* to remove a Priſoner being in the Goale; if the Plaintiff will not pay the Sheriff for removing the Priſoner, what he demands, the Sheriff returns, That the Writ came too late; or that the Defendant languiſheth in Priſon, ſo that he cannot have his Body at *Weſtminſter*, at the day of the Return of the Writ,

This is evident in every mans practiſe, and needs no proof.

Kitch. Return. Brev. *fo.* 259.

Writ, without danger of death. So if a Prisoner be bailed, and a Bond given for Appearance; if the Bond be sufficient, the Sheriff will return, That he hath taken the Body of the Defendant, and hath it ready at the day: and sometimes when the Defendant is Arrested, and at liberty, the Sheriff will return, That he hath the Defendants body in Prison, and that he languisheth; when he goes abroad, but is not minded to appear to answer the Suit. The Common Barre, and the story about Black-acre and White-acre, and such things as are invented, when men give to others colour of Title, as an inducement to some other matter: All which things are repugnant to Honesty and Simplicity. The like may be said of Proceedings in Courts of Equity: If a man sue for Lands, to which he pretends an Equitable Right, as a ground of Equity; to make his Bill hold, he usually alledgeth, That the Plaintiff hath lost his Evidences; That they are come to the Defendants hands; That the Plaintiff can maintain no Action at Law for them, because he knows not the Dates nor Contents of them, nor whether they be in Boxes, Bags, or Chests; and divers other such other false surmises: when the Plaintiff hath the Evidences in his own Custody. In a Bill, where a man sues to have an Agreement performed, it's usually alledged, That the Witnesses to prove the Agreement, are dead, beyond the Seas, or in remote places unknown; or so impotent, that they cannot be produced at any Tryal: and many such-like. So likewise, in a Commission to take the Cognizance of a Fine, it's alledged, That the Cognizors are so impotent, that they cannot travel to *Westminster*, without danger of death; when they are in perfect health. These, and many more lyes and falshoods, are made, and entred of Record every Term, which are clearly sinful, and ought to be reformed, *Job* 13.4. *Acts* 5.3,4. *Coloss.*3.9. *Revel.* 21.27. & 22.15. *Luke* 19.8.

West. Symb. 2 part. Tit. *Fines*, sec. 111. Old *Natura Brevium*, fo. 20

16.

The uncertainty of the Law for want of a standing Rule, (the Law it self being but meer Opinion, is a matter of great prejudice, and causeth an excessive charge many times

to

to the Suitors: The Judges (being (*l*) called the Speaking Law) very frequently differing in their Opinions; and ſometimes the ſame Judges, when Lawyers have given that under their hands for Law, which when they have come to be Judges, upon ſecond thoughts they have judged otherwiſe: although ſuch Judges have been known and reputed to be men of Integrity and clear Judgement. And this uncertainty is not onely about the higheſt Apexes of the Law, but in things of ordinary concernment: As about Waſte; abundance of Money hath been ſpent, to know what power is given to a Termer by theſe words, *To hold*, &c. (m) *without Impeachment of Waſte:* whether he be onely diſcharged of unvoluntary Waſte; or whether the Termer may take down fixed Wainſcot, or ſuch-like, which he ſet up; or whether he may not cut down Timber-Trees, and pluck down houſes: and further, whether he may not take all the Materials to his own uſe. If I miſtake not, all theſe things have been judged Negatively and Affirmatively: And the laſt Solemn Judgement was, That in ſuch a caſe, a Termer might commit wilful Waſte, and take all the Materials to his own uſe; which is Repugnant to all former Judgements: and yet all the Judges are not now of the ſame Opinion in ſome of the Caſes above-mentioned. It were an eaſie matter to ſet down twenty ſuch Caſes, where the Judges have been divided; and in divers Caſes, where one Court hath agreed, the other Judges (upon a Writ of Error) being the greater number, in the Exchequer Chamber, have reverſed their Judgements. The like uncertainty is found in every mans practice in (n) ordinary things; as, whether in an *Indebitatus Aſſumpſit* for Wares and Mer-

(*l*) Bodin. Repub. l. 3. c. 5. p. 325. *The Magiſtrate is a living or breathing Law.*

There hath been a Judgement upon a Writ of Error in the Exchequer Chamber, given by all the Judges, That no Information will lie in any Court at Weſtminſter, *but in the proper County, before the Juſtices; and yet ſuch Informations are conſtantly brought and proſecuted every Term, contrary to that Judgement grounded upon the Statute of* 21 Jac. c. 4.

(*m*) Coke lib. 4. fol. 62, 63. *Herlackendens* Caſe, compared with *Lewes Boles* his Caſe. Coke lib. 11. fol. 81, 82, 83. *See the many Caſes there cited.*

(n) *There are many Controverſies concerning Actions upon the Caſe for words; and many times, words of high concernment are adjudged not to bear Action; and for others of leſs concernment, judgement hath been given.* Corn. Tacitus *obſerves, That the* Romans *Laws were ſwayed hither and thither by Might, Ambition, and Corruption; and all was for want of a ſtanding Rule.* Tacit. Annal. lib. 1. cap. 1. pag. 2.

chandize, upon a *Non assumpsit* pleaded, the Plaintiff shall not be put to prove, That the Money demanded grew due for such things as are mentioned in the Declaration; or whether he may give in Evidence, That it grew due for Rent, or other things not mentioned: Whether upon a Lease by Paroll, an Action upon the Case will lie for Arrears of Rent: Whether a man to an Action of Trespass, or Assault, Battery, and Wounding, may plead to the wounding, *Son assault Demesne*. Within Thirty years it was commonly held for Law, That if a man strike me with a Stick, I might not cut him with a Sword: but now of late, the common use is, to justifie the whole Battery, both Beating and Wounding. If a man were minded, he might fill a Book with such Uncertainties. And this is that which *Wilson* Histor. Great Brit. p. 96. caused King *James* to tell (o) Sir *Edward Coke*, That he had inserted into his Books, many extravagant Opinions for good Law, which were not Law; and therefore commanded him, To Review and Correct them, and bring them to him to be perused. And the same Judge is also charged, That he could turn the Edge of the Law any way, and strike with that weapon whom he pleased; (p) answerable to what a Learned Chancellour said once upon the Bench, Such a Lord Chancellor was of that Opinion, and I am of this Opinion. If there were nothing in the Law faulty besides this, it were worthy to be perused and amended: for, the Judges being the Speaking Law, the Law is nothing but their (q) Opinions; contrary to that Truth which ought to be in all Laws: But the Judicial Law of *Moses* shall never be found defective, *Matthew* 5. 27,28,38,39. *Daniel* 7.25. *Nehem.*9. 13,14. *Esth.*1.19. *Ezek.* 20. 24,25. *Esth.*3.8.

(p) *That Law, which like the Lesbian Rule, is so pliant, that it may be turned every way, loseth the force of a Law, and becomes like a Nose of wax; and so the Judge, who is but the Minister of the Law, becomes the Master of the Law*, Bodin. lib. 6. cap. 6. pag. 760.

(q) *Cock* Essay, p. 111.

17. The

17.

The matter concerning ſpecial Verdicts is a buſineſs needleſs, and of unſufferable charge; which might be prevented, if the Judge in his Circuit, where he took the verdict, would but report the matter in a few words to his fellows; or if all the Judges at the Bench would determine what the Law is, when they hear the tryal; for that their Judgment then would be as effectual, as when it is given upon a ſpecial verdict; for that, if either party diſlike the Judgment, he may bring a Writ of Error as well in one caſe, as in the other, where a verdict is given by the Jury. There are few of theſe verdicts, if they be upon Titles, but they coſt an hundred marks one both ſides, Drawing, Ingroſſing, Copying and Entring, ſometimes much more; and generally ſerve for nothing, but the oppreſſion of the people, and inriching of ſome few Officers, contrary to the directions of the Holy Scriptures, *Job* 29.16. *Amos* 5.7. *Iſa.*2.6.

Every mans purſe, who hath a ſpecial verdict, witneſſeth this.

I have known two hundred pounds ſpent, to know, when a leaſe ſhould Commence: which ſeems plain to every Ordinary Capacity; but the wits of men made the matter doubtful & uncertain. Special verdict between Sowtham *and* Clerk *in the upper-Bench & now in the Common pleas.*

Let all who have contracted at theſe places, ſay whether this be not true: and if they deny it, the Author will either by Inſtances prove the truth of it, or put it out of the next Impreſſion, and acknowledge his offence.

18.

To theſe oppreſſions and evills in the practiſe of the Law, I may well adde the practiſe of new Law, at *Drury-houſe*, *Worceſter-houſe*, *Gurney-houſe*, and other places, for ſale and Contracts of Lands confiſcated. Theſe Cloyſter up themſelves, and uſually a man may wait a week before he can have an anſwer, and ſpend four times as much upon Doorkeepers as the Fees o the order come to: and he that hath the beſt skill to do his own buſineſs, is enforced to entertain one of their Officers to do it; becauſe another cannot be admitted. The paſſing of an aſſurance here coſts three times as much as the paſſing of a Grant under the Great-Seal: there you ſhall have a Clerk get more mony in three years, then an honeſt man can uſually ſave in thirty years practiſe of the Law. This Cloyſtering up themſelves, is againſt the Laudable Cuſtomes of the Jews, and other Nations, recorded in the book of God; whoſe Judges ſate in the Gates: and the ſame is the cauſe of much bribery, extortion, and oppreſſion. If they conſulted about State-affairs, it were fit they ſhould be private; but Matters of Contract and purchaſes,

chaſes, and other things of that nature, ought to be open and publique, *Job* 31. 21. *Prov.* 21. 23. *Eſth.* 2. 19. and 3. 1, 2. and 5, 13. *Dan.* 2. 4. *Jer.* 38. 7. and 39. 3.

19.

The conſtant practiſe of retaining Counſel or Advocates (*r*) in all cauſes, (as it's now uſed) is (*ſ*) a high provocation of Almighty God, and without Gods great mercy, a ruine to the Souls of the practiſers. Theſe men for fees muſt ſtretch their Conſciences, and ſet Truth upon the Tenters, or Impriſon it in unrighteouſneſs, (which is a marke of a Reprobate-minde) in as much as there is not one cauſe of a thouſand, which is pleaded, but one ſide or other endeavours to ſuppreſſe the truth: and he that with an Impudent Face, and the ſtrength of his Wits, (being blinded with the gift) cannot ſet a fair Colour upon a bad cauſe, is accounted but a ſimple fellow, and not to deſerve his fee: this is to call evil good, and good evil; and the practiſe like that of *Tertullus* his rayling againſt *Paul*; and the fee, or reward, is no better then *Balaam's* wages of Iniquity, and againſt all Scripture-practiſe: The only remedy hereof is, that the Lawyers or Advocates, ſhould be (*t*) ſworne as *Amici Curiæ*, or aſſiſtants to the Judges, to endeavour to diſcover the truth without partiality; and for this to have their reward from the State, *Acts* 24. 5. *Exod.* 23. 2. *Lam.* 3. 35, 36. *Num.* 22. 7, 17. 2 *Pet.* 2. 15. *Judges* 19. 30. and 20. 7, 8. *Rom.* 1. 18. *We read in the Church-Hiſtorie, that* (*u*) Baſſianus *the Emperour* (*Son of* Severus) *having ſlain* Geta *his Brother, would have had* Papinianus *a Lawyer to have pleaded his defence of that Fact before the people of* Rome; *But the Lawyer Refuſed therein to be an Advocate for the Emperour, ſaying, Sin might more eaſily be committed then defended.* (*w*) And for this worthy fact he ſuffered death: but God ſuffered not this murder to go unpuniſhed, for this *Baſſianus* was ſhortly after murdered by *Macrinus* his Succeſſor in the Empire. Let this Lawyer be an Example to all Lawyers,

(*r*) *This is ſo Common, that he is many times made to pay Coſts, that hath no Counſel, as if he did it for delay.* Holt *againſt* Matthew *in* Chancery.

(*ſ*) Exod. 23. 2. Deut. 27. 19, 11.

(*t*) *At New* England, *the parties in all cauſes ſpeak themſelves, and if need be, the Magiſtrates, where the cauſe requires, ply to the parts of Advocates, without fee or reward.* Lechford *News*, pag. 28.

(*u*) Euſeb. L6. c. 21.

(*w*) Symſon *Church* Hiſtor. *life of* Baſſianus, pag. 31.

Lawyers, leſt he riſe up in Judgment againſt them at the laſt day, and Condemn them, for being more blind and unjuſt then the heathen.

(x) *Plato* eſteemed theſe hyred *Orators*, but as *Calumniators* and *Sycophants* (*hinc innocens ut nocens damnatur, & contra*) making the Guiltleſs Guilty, and the Guilty Guiltleſs. *Cato* refuſed to allow ſuch pleading, *quia orationis facundiâ facilè poſſent æqua & iniqua perſuadere*; Becauſe by Eloquence of words they could eaſily perſwade to right or wrong. *Demoſthenes* boaſted that he could change the Sentences of the Judges at his pleaſure. And *Cicero* was called *Rex, oratione ſua omnia regens*: Playing *Rex* with his Oratory, thereby ruled all things at his pleaſure. This is both an offence againſt God, and a wrong to the people, eſpecially to the poorer ſort.

(x) *Wall* on. 1 Corin. 2. 2. Intit. *None but Chriſt. The* Romans *allowed no mony or gift to pleaders.* Piſo *the* Roman Prætor, *condemned this kinde of pleading, calling it cruelty in Advocates.*

Tacit Annal. lib. 2. cap. 8. pag. 43. & l. 11. c. 1. p. 142.

20.

That Ridiculous, or rather Profane form of Prayer uſed by the Clerk upon the arraignment of a Priſoner, upon his Trial, when the Priſoner being demanded, whether he be Guilty or not Guilty? anſwereth, Not Guilty, Then the *Clerk* to make up the *Iſſue, Replyes, Cul. Priſt*: That is, Thou art Guilty, and I am ready to prove it. Then is the Iſſue joyned: (y) Now comes out that Common Prayer or Conjuration, which is repeated twenty or fourty times at one Goal-delivery, if there be ſo many Priſoners arraigned; *God ſend thee a good deliverance.*

(z) This formality, or rather ſuperſtitious profaneneſs in Prayer (wherein the Holy name of God is uſed ſo lightly, and accuſtomarily, being pattred over, as the Papiſts patter over their *Pater Noſters, Ave Maries*, and ſuch like upon their beads (without either fear or wit:) In Imitation of whom, we have this and all other forms of Prayer deviſed by man. This is againſt the Holy Laws of God, which forbid, 1. Profane uſing the name of God. 2. Superſtition in ſo applying this

(y) *Such forms in all caſes, are accounted as the Common Law, and ſometimes the proceedings are nought without ſuch formalities, the Common Law being chiefly old cuſtomes, and nothing elſe, beſides the Judges opinions.*

(z) Perk. *on the* 2. Com. vol. 1. pag. 38. col. 1.

this form of Prayer. 3. Vain Tautologies, as if the very repetition of it were effectual for some good purpose, being used without reverence or devotion, *Matth.* 6.7. *Rom.* 12.11,12. *James* 5.16. *Jer.* 42.2. *Isa.* 29.13,14.

21.

That Law (accounted amongst the Laws of Merchants) that Accounts made up between Merchants or other Tradesmen, and signed under their hands, and allowed (Errours Excepted) as the form is, should not again be examined, although there be palpable or Errours wilful mistakes, seems to be a hard Law. It's true, that suits upon Trivial supposed mistakes are not to be incouraged; but where Errours are of great concernment to mens estates, and clearly proceeding from injustice, such Accounts ought in Equity to be examined. Although now in such case, the wrong'd party hath no remedy either in Law or Equity. It were fit some honest able men were appointed to Determine Accounts in such cases, to avoyd wrong and oppression amongst Merchants and Tradesmen *Isa.* 58.6. *Isa.* 1.17. *Job* 29.15,16. *Lam.* 3. 35,36. *That Golden Rule of our* Saviour *over-ruleth all things of this nature:* Whatsoever ye would that men should do unto you, the same do ye to them, *Matth.* 7.12.

Barker *against* Nayler, *and* Townsend *in* Chancery, Anno 1654.

CHAP.

Chap. XIII.

That the general Execution of the Law, as it's now ſeated and practiſed at Weſtminſter, *is a Common oppreſſion to the whole Nation.*

FIrſt it is to be premiſed which cannot be denied that by the Ancient Law of the Land, no Action could be brought at *Weſtminſter*, out of the proper County (I do not mean in reſpect of the Ven. or place for triall, but in reſpect of the beginning, continuance, and end of the ſuite, all being done at home) except the matter in queſtion were of the value of forty ſhillings or more.

By the Statute of *Glouceſter* (a) (which is taken for granted to be in affirmance of the *C*ommon-Law) It is ordained that no man ſhall have a Writ of treſpas for goods taken, unleſſe he ſwear that the goods taken away were worth forty ſhillings, and all ſuch cauſes where the (b) matter in demand was under forty ſhillings, were anciently determined in the County Court, Hundred Court, or Court Baron of the Mannour, where the cauſe of Action grew, then were not the *C*ourts at *Weſtminſter* ſtuffed with ſuch a world of frivilous and triviall ſuites, as they have been in this laſt Century, eſpecially the laſt fifty years, for then (I mean an hundred years ſince) began thoſe Courts to fill and ever ſince have ſwelled, and the *C*ourts of Record, (as well as thoſe Court Barons above-named) in the Counties and *C*ities have decayed, and in many places grown out of uſe. It's written that in King *Hen.*8. his Reign (who died but 110. years ſince) there were ſome dayes in the Terme, when there was not one cauſe heard, or ſo much as any motion in ſome one *C*ourt at *Weſtminſter*. And that about the tenth year of Queen *Elizabeth*, there was but one Sarjeant, namely Sarjeant *Bendloes* at the Common-Pleas Bar, which is a ſtrong preſumption that the buſineſſe was little, or elſe there would ſurely have been more Sarjeants created, before the reſidue had died.

(a) 6 Ed. 1. cap. 8. anno 1278. *Cook* Inſt. 2. part. p. 311. and 312. Ex. Briton. c. 28. fol. 61.

(b) *Powels* Court Leet, fol. 12. 13.

2. And if it be conſidered what proportion forty ſhillings in

money, in King *Edw.* 1. his time, (when the Statute of *Glouceſter* was made) bears with many in theſe dayes, no one will wonder that there were few cauſes in *Weſtminſter* Hall, when all under that value were diſpatched in the Country: I take it to be clear, that forty ſhillings then was as much in value (in reſpect of the uſe and benefit of) as forty pounds have been ſince, and that forty ſhillings would then have bought as much Lands, goods, or Commodities of the growth of this Nation, take one Commodity with another, as forty pounds would have bought fourteen years ago, which doth appeare thus: (c) twenty pounds by the year was in the dayes firſt above mentioned held (d) ſufficient to maintain a Knight, and that is a Knights fee, they that accompt it by the quantity, ſay that it contains eight hundred Acres, all conclude it to be between ſix hundred and four-ſcore, and eight hundred Acres, whoſe accompt is the leaſt; ſo it hath been lately reputed within thirty miles of the middle of *England*, where commonly Lands are valued at ten ſhillings the Acre, by the year (being neither Forreſt, Heath, Waſte, nor courſe arrable ground) and as much above that rate as under.

(c) *Cooke* Compl. Copieholder. Sect. 25. p. 36.
(d) *Cooke* Com Littleton. L. 2. Sect. 95. fol 69. *Camdens* Britan. p. 136. *Weſtm.* 1. Compared with *Fitz. N. B.* fol. 62. *Lowes Caſe.* 19. fol. 123.

According to this accompt twenty pounds by the year, at twenty years purchaſe, comes to 400. l. and eight hundred Acres, at ten ſhillings the Acre, comes to 400. l. *per annum*, which at twenty years purchaſe comes to 8000. l. which is for every twenty ſhillings, twenty pounds; then add to this, that money it ſelf is raiſed (e) from twenty pence to five ſhillings the ownce, and above, and the native Commodities of the Countrey are raiſed as much as Land: It's Reported by *Stowe* (f) in his Chronologie, out of the black book in the Exchequer, that *Anno* 1175. a meaſure of Wheat to make bread for one hundred men, was valued at one ſhilling, the carcaſe of a fat Oxe, at one ſhilling, a fat Sheep, at four pence, Provender for twenty Horſes, at four pence, and I finde in an old Manuſcript of good credit, that *Anno* 1372. a quarter of Wheat was at two ſhillings, and a fat Oxe, at ſix ſhillings eight pence, and if credit may be given to ſuch as have died in this age, ſuch a beaſt as twenty years ſince was worth five pounds, might have been (within an hundred years (g) before) bought for thirteen ſhillings four pence. Something

(e) *Cooke* Inſt. 2. part. p. 311.
(f) *Stowe Annal.* in the life of. *H.* 2. pag. 154.
(g) *Its proved by many inſtances that within one hundred and ſeventy years paſt, Lands have been raiſed in* France *and the Countreys adjacent, twenty times dearer than they were, and Fruits and Victuals raiſed near the ſame proportion.* Bodm. Republ. l. 6. cap. 2. pag 666, 667.

thing may be alſo gathered by the computation of the Rent-Corn reſerved upon the Colledge-leaſe, made in purſuit of the Statute of the 18th. of *Eliz.* where the third part reſerved in Corn, (if I miſtake not) doth much exceed the other two thirds in money. Lay all this together, and it muſt needs be granted that forty ſhillings, when the Statute of *Glouceſter* was made, was as much in value as forty pounds was fourteen years ſince. I do not ſpeak of the values, as things now are, becauſe Corn and Cattle are fallen half in half from their uſual prices; (but Almighty God can alter thoſe things in an ordinary courſe of providence, when he pleaſeth) in the mean while we are to bleſſe God for our plenty, which never was conceived to be a Plague, or a Judgement, but a token of great proſperity, and muſt needs be ſo at this day, if Money and Lands were rated anſwerably. Now then, if all Actions under forty pounds, were determined in the Counties and Cities where the Actions grew, there would hardly be ten of an hundred commenced at *Weſtminſter*, which would be an exceeding benefit, and advantage to the whole Nation.

3. The contrary practice now in uſe, that every trivial, idle impertinent ſuit, of three pence value ſhould be brought at *Weſtminſter*, whereby all ſorts of men from *Michaels-Mount* in *Cornwall* to *Berwick* in the North, and other places far and near, ſhould be hurried up to *London* and *Weſtminſter*, (the poor although they beg as it's uſual, becauſe no one will follow their Suites without money, and the rich, the better to over-ſee their Suites, or taking ſuch an occaſion, it may be for curioſity to learn and ſee faſhions, or for more vicious and wicked ends, many times to the ruine of them, and their families, all occaſioned by the Laws reſidence at *Weſtminſter* (whether they muſt go) this I ſet down to be one of the greateſt oppreſſions and burdens, which the Nation groans under, and not to be parallel'd in any Kingdom, or Common-wealth in the whole world, moſt like to the *Turks* travelling to *Mecca*, to viſite *Mahomets* Tomb, this in general.

All Nations except this Common-wealth have their Laws executed in every City.

See Corollarie. p. 142.

The Romans obſerved this courſe to have Juſtice done in every City.

Tac. Annal. l. 1. c. 3. pag. 5.

Now out of this grand miſchief, many other evils grow, and are nouriſhed thereby.

1. Expences occaſioned by Suites at *Weſtminſter* are ſix times more than they need be, whereof the greater part is uſually ſpent in Horſ-meat and Manſ-meat.

2. Travelling to *London* conſtantly occaſioned by theſe Suites from Term to Term, much weareth out mens ſpirits, and weakneth their bodies, eſpecially if the journey be long and tedious, beſides the loſſe of time, which might be ſpent more profitably at home.

3. The deſtruction of Horſes, which have pined, ſtarted, & ſpoiled in and about *London*, is by eſtimation as much loſſe and charge yearly to the Common-wealth, as the payment of a Subſidy in former times, which was above one hundred thouſand pounds, that is above ten pounds for every Pariſh, one with another.

4. The concourſe of people of all ſorts, from all parts to *London*, cauſeth a great increaſe of wickedneſſe, and is the Nurſe of all Rebellion and Commotion, by reaſon that *London* being as a Wood to ſhelter all men, as well ſuch as having run out of their Eſtates live there unknown, as all others, who live by their wits, or have committed any villanies, or have any deſign to plot, or contrive miſchief, uſually reſort thither; where by reaſon of the multitude, and ſo many ſtrangers unknown, no account can be taken of their Actions, or manner of living, the common pretence being their attendance upon one Court, or other, which occaſioneth Impunity, and lets looſe the Rains to all Iniquity.

5. This hurrying up to *London*, eſpecially by the Nobility and Gentry, cauſeth nothing but profuſeneſſe, and ill husbandry, where for the moſt part they learn nothing, but drinking, drabbing, and fantaſtical faſhions, and in the mean while their houſes in the Countreys ſtand vacant, as a Lodge whom none inhabits but a ſingle keeper, and their poor Tenants want work and relief.

6. Upon this occaſion the whole conſiderable trade of the Nation (except of ſome few Sea-Towns) is carried up to *London*, & generally all other Cities and Towns are decayed, and almoſt ruined and impoveriſhed. (h) And this muſt needs be that *Generatio unius eſt Corruptio alterius*, as when the head is nouriſhed to an unuſual greatneſſe (as in caſe of the Rickets) then all the body grows lean, although the over-growing of the head is but a cor-

(h) *This cauſeth thoſe two plagues of a Common-wealth, Riches and Povertie, when ſome have too much and others too little, which makes the Rich tyranize over the poor, and more to regard their pleaſure and exceſſe in dyet and Apparell than vertue and godlineſſe. And the poor becauſe they ſee themſelves miſerable and troden under foot, to envy the rich, and become deſperate.* Bodm. Republ. l. 5. cap. 2. pag. 569. Ex Platone.

a corrupt, or excrementious increaſe. And it is to be believed that the ballaſting of the trade of the Nation would much tend to the health, and good of the whole. For if *London* (which now furniſheth all the Nobility, Gentry, and people of Eſtates and quality, through all *England*, and a great part of *Scotland* and *Ireland*, with their Apparel, Linens, Spices, and all neceſſaries, and curioſities) ſold the ſame to the Tradeſmen and Chapmen in the Countreys, this would inrich the whole Nation; and *London*, for the better part of it, would rather get than loſe by it, for then they would have a certain trade, with ſuch as (having trading in the Countrey anſwerable to the ſtock they keep in Trade) would grow rich, and be able to pay their Crediors at *London*, whereas now hardly one Tradeſman in a Market-Town, and very few in Cities and great places get any Eſtates, and many when they dye leave not ſufficient to pay their debts: And on the other ſide, the moſt part of the Retaylers in *London* deal in the Countreys with the Gentry and others, and the Taylors, who commonly run the greateſt hazard, becauſe he that will gain greatly muſt adventure deſperately, by reaſon of long payment, and loſſe of debts, become ruined and deſtroyed in their Eſtates, by truſting of ſtrangers far and near, whereas if the Trade were more mediate, and went through the hands of the Tradeſmen in the Countrey, as it would be more certain to the *Londoner*, ſo the Countrey Tradeſman would be better able to furniſh himſelf; and by this means leſſe loſſe would be in debts, when the Countrey-man truſts his neighbours with that he knows men are able to pay, and the Commodity ſold might be afforded at the ſecond hand as cheap as it's ſold in *London*, in regard of the Charge, Rent, and houſe-keeping, which admits a great abatement in the Countrey of what is ſpent and paid in *London*.

7. The laſt thing which ſhall be mentioned touching this matter, and which is moſt ſuitable to the propounded end of the diſcourſe in hand, is, that this carrying of all cauſes to *Weſtminſter* makes in a manner all the Courts of Record, in all other Cities & Towns Corporate, with the County Courts, Hundred Courts, and the Courts of the Mannours, and all other Court Barons to be diſuſed and in a manner deſtroyed, to the prejudice both of Lords and Tenants, who are much impoveriſhed with Suites at

Weſtminſter upon every trivial occaſion, and in the mean while there is much diſorder at home for want of Courts to redreſſe petty wrongs, and ſo to keep and preſerve quietneſſe.

8. Theſe things are enumerated as evils occaſioned by the general Reſidence of the Laws at *Weſtminſter*, without reference to the particular *C*ourts; now ſomething ſhall be ſpoken of in relation to the ſeveral *C*ourts, which are neceſſitouſly oppreſſive to the Suiters, in regard of the multitudes of Suites: The chief grievance in this kinde is, the crowding of all cauſes of Equity into Court of Chancery (except a very few in ſome caſes in the Exchequer) in which Court there have been ſaid to be ten thouſand cauſes entred into the ſix *C*larks books, ſome of which are ſeven, eight, or ten years old, and without doubt there are as many more upon *Sub-pœna's*, and Bills not fil'd, of all theſe there cannot be leſſe than one thouſand alwayes ready for hearing (beſides ſuch as ſtand to be heard upon Reviews, Pleas, Demurrers, Exceptions and Reports.) And in one Term there is not time uſually to determine one third part of them (beſides hearing of motions, which neceſſarily ariſe in moſt caſes) the reſt being put off, inſomuch that many times you ſhall finde above twenty cauſes in the paper for one day, whereas within thirty years laſt paſt there were uſually appointed not above four, or five cauſes to be heard every day in *C*ourt, and not many more at the Rolles: But ſince the aboliſhing and diſuſe of the *C*ourt of Wards, *C*ourt of Requeſts, high *C*ommiſſion, Star-Chamber, Eccleſiaſtical *C*ourts (as they were called) Queens *C*ourt, and Dutchy *C*ourt, every of which (as might be eaſily ſhewed) eſpecially the *C*ourt of Requeſts, poured ſomething into this Ocean the *C*hancery, the ſame is grown ſo full that it's impoſſible that the cauſes there ſhould be diſpatched without an exceſſive charge and long attendance.

(i) *Cooke* Engliſh Law. pag. 45, 46.

(i) And this *C*ourt as it now ſtands is the next great oppreſſion of the Nation, and tends chiefly to the inriching ſome few Officers and Practicers, and the impoveriſhing of the *C*ommon-wealth, where, in moſt cauſes (unleſſe they be agreed by *C*ompromiſe) the remedy is worſe than the diſeaſe.

9. The next thing (to which I take exception) occaſioned by the general practice of the Laws at *Weſtminſter*, which may be accounted a grievance is; That almoſt all the Suites in Law, of the whole Nation, are brought in the *C*ourts of the Upper Bench, and

and Common-Pleas, which are more tedious and chargeable than they need to be: for whereas a man arraigned for his life, hath but a day; nay, it may be, but an hours warning, to make his defence, onely he knows before hand when the Goal-delivery will be, here regularly a man cannot begin and end his Suit, be it never ſo trivial, under three Terms, (unleſſe the Defendant will confeſſe the Action) eſpecially in the upper Bench, where after the Arreſt, or appearance, which ſometimes is hard to get done, the firſt Term the Plaintiff declares, and the Defendant imparles, the ſecond Term the Defendant pleads to iſſue, and the Plaintiffe carries down the cauſe to tryal to the Aſſizes, where if the cauſe be tryed, Judgement is given thereupon in the next Term following, and this takes up about (*k*) ſeven moneths time, but if the Defendant be wilfull and liberal, he may keep the Plaintiffe in Suit a far longer Term, whereas in ſome Courts of Record in the Countrey, ſuch a cauſe may be ended in ſix weeks, and might be done in half the time if the Law were amended, and made like the proceedings in *Wales*, which are better and ſhorter than at *Weſtminſter*.

(k) *At new England the Defendant hath warning a convenient time before the cauſe be heard, and moſt cauſes are ended upon the hearing at the ſame Court.* Lechfords News pag. 39.

10. To theſe may be added, as an evil growing out of the general Execution of the Laws at *Weſtminſter*, the greatneſſe of Offices, both in reſpect of work and revenue, which for the moſt part are executed by Clarks and Deputies, and nothing done by the Maſter of the Office, but onely to take the Accounts, and receive the Fees, at the end of the Term, allowing little or nothing to ſuch as do the work, but what comes by ſharking, & the late-born Miſcreant, called Expedition, and indeed the great Officer (who ſtands like an Andiron in a great Room, onely to make a ſhew) ſets the Clarks to all the labour, and to abide the heat of the buſineſſe. And this muſt needs be ſo, for theſe Officers formerly uſed to pay ſeven years purchaſe for their Offices; Is it not a ſhame that one man ſhould pay for an Office, firſt and laſt, forty thouſand pounds, as it's generally ſaid one paid for the Upper Bench Office? That a Prothonotor of the Common-Pleas ſhould pay nine thouſand pounds for his Office: That a ſix Clark in Chancery ſhould pay ſeven thouſand pounds for his Office:

And

And not Aphilozers, Exigenters, Clark of the Warrants, Eſſoines, Curciters, or hardly any other Office to the very Cryer and Bag-bearer, but all expoſed to Sale in this laſt Age, and many times ſold to ſuch, as were onely fit to be entertained, becauſe they gave the moſt money for them: And then as a neceſſary conſequence, he that bought dear muſt ſell dear, inſomuch that I have heard it credibly reported, that a Souldier becoming a Courtier, was by King *James* made a Maſter of the Chancery, (the man I knew well) this Maſter being taxed, that he expected too much money in ſome buſineſſes before him, in an angry manner ſaid, that the King promiſed him that the place ſhould be worth five hundred pounds by the year to him and he would make it ſo, if he could; (*l*) In the mean while here is great extortion and oppreſſion, done to the people by the greatneſſe of theſe Offices, which is the cauſe that men are put into them more for their wealth than for their wit, learning, or honeſty, and the buſineſſe is done accordingly, to the wrong and prejudice of the whole Nation.

The Romans *uſed not to ſell Offices, The Queſtorſhip was granted according to the worth of the Suiters, untill by* Dolabella's *advice it was put to Sale, which is blamed by the Heathen Hiſtorian as a fault.* Tacit. Annal. lib. 11. cap 7. pag 148. *The Senators were choſen by voices, and if they proved infamous, they gave up their places to ſave their Credits.* Idem l. 11. c. 8. p. 150.

(*l*) Alexander Severus *at his coming to the Empire after that profuſe braſt* Heliogacalus; *although he found the State much in debt, refuſed to make Sale of any Office, ſaying* Non Patior mercatores Poteſtatum, *and a learned man, who reports this, ſaith, that no merchandize is more baſe than the Sale of Offices.* Bodm. Republ. l. 5. c. 4. p. 592. and l. 6. c. 2. p. 661.

11. The proving of Will, and granting Adminiſtrations being now onely done at *London*, is likewiſe an oppreſſion; and ſo is it an oppreſſion, that all cauſes Teſtamentary, and ſuch as concern Adminiſtrations and Legacies, of how little concernment ſoever, are heard there, and nothing determined in the Countrey. This is worſe than the courſe taken in the Biſhops time, when all mens Wills who had not *bona notabilia*, viz. (five pounds in goods out of the Dioceſſe) might be proved in the Countrey, for leſſe than half the Fees which are now paid, and all matters of inſtance touching ſuch mens Eſtates, were heard and determined there, although the proceedings where there was any oppoſition were exceeding tedious, and the Appeals intolerable, the courſe now held ought nevertheleſſe to be amended.

12. The matter of paſſing accounts in the Exchequer, is an exceeding burden, and the cauſe of much bribery and extortion in the

the Countrey, the account of a Sheriffe of any ordinary County will cost one hundred Marks to passe the same, and of some Counties, one, two, or three hundred pounds, there being so many Offices to passe through, and some of the Officers taking excessive Fees, forty shillings for an Attornies Fee, and the Secondary as much, this causeth the under Sheriffe to take two shillings a name, and in some Counties more, for his Warrant, where there is but four pence due, and all the pretence is the great charge of passing their accounts. There is no use of any more Offices in the Echequer, but the Receiver to take the money, the Auditor to make up the accounts, and to see that the Receiver neither cozen the Lord *Protector* nor the Countrey, and the Controller to see that no deceit be done by the Auditor, this I conceive to have been the ancient course, when (*m*) the Exchequer was at *York* in the time of *Edw.* 1. and after it was removed to *London*, and was in effect the same which was appointed by the (*n*) Ordinance of Parliament, Anno 1643. for receiving of the Revenue of the late King, Queen, and Prince, and might be so appointed again, if that the State did see cause, and the same would ease the Common-wealth of much bribery & extortion: besides this, the publick treasure must needs decrease passing through so many hands; It was proved in *France* that a third part of all Receipts went to Officers; it were well if ours were compared with it. The cure of all these miseries is that which the Ancients sought much after, (*o*) an Equality, I do not mean the equal division of all the Subjects Lands, or Goods, for that in a manner would destroy (*p*) property & ownership of the things of this life, which would both cut off the endeavours of men to increase their Estates by labour, industry, and trade in Lawfull callings, which the Law of God enjoyneth; And also prompt men to idlenesse, and bring confusion in the end. But I mean the ballasting, the trade, and businesse of the Nation, that it may be divided into all the parts of the Lands for the good of the whole, which might easily be effected, if the Law were setled in the severall Counties.

The Romans had great care to bridle the covetousnesse of Officers and Farmers of the publique Revenue. Tacit. Annal. l. 13. cap. 12. p. 196.

(*m*) Stowe Annal. *life of King* Edwd. 1 p. 209. anno 1304.

(*n*) *Ordinance* 21 *Septemb.* 1643.

Anno 1556. *Out of the Province of* Languedoke. Bodin. *Republ.* l. 6. cap. 2. p. 685.

The same learned Author reports it an excellent remedie of inequalitie; that all the Territories of a Common-wealth were surveyed (as he saith the Roman *Territories were) that every mans Land and Possession might be known and certain that the Taxes and Imposts might be equall.* Bodin. l. 6. c. 1. p. 641. Ex Cassiodoro. England *was so surveyed in the Time of the Norman Conquerour. This appears by* Doomsday *Book, which contains the very originall survay.* Cowel. *Interp. verb.* Doomsday.

(*o*) Hawk. *Right Dominion* l. 2. cap 1. pag. 21. and Doct. and Stud. lib. 1. c. 2. (*p*) Bodin. *Republ.* lib. 5. c. 2. pag. 569.

And the Rivers in the *Mediterranean* parts made Navigable, which might be done (as I ſuppoſe) with the expence of one moneths Tax of 100000. *l.* upon the whole Nation. This would be the Nurſe of Peace, & of love betwixt Subjects. The contrary, The Wiſe & Learned have accounted that amongſt all the cauſes of ſome Seditions, & changes of Common-wealths there is none greater, than the exceſſive wealth of few Subjects, and the extream poverty of the greateſt part, who readily uſe to imbrace any occaſion to ſpoil the rich: (q) But it was an unjuſt and fooliſh Law publiſhed by *Nabis* the *Macedonian* Tyrant, (when *Philip* King of *Macedon* had truſted him with the Citie of *Argos*) that after he had plundered and abuſed the Citizens, he commanded all Debt Books and Bonds to be Cancelled: And the Lands to be divided amongſt the people by the poll. Two fire-brands (ſaith the Hiſtorian) enough to ſet all the Nobles and Commons on fire: And ſo to deſtroy one another.

(q) *Tit. Liv.* l. 32. p. 832. *L. M.* p. 833. A.

Chap. XIV.

That the body of the Law is wanting and defective, there being neither Common-Law nor Statute-Law for remedy in many caſes, nor any puniſhment conſiderable for ſundry great offences.

The Jewes governed by Felix by puniſhments being exaſperated fell into Rebellion and wars. Tacit. Annal. l. 11 c. 11. p. 172.

THe firſt thing which ſhall here be inſiſted upon (as being an univerſal, ſinfull defect, and the cauſe of much perſecution of the one ſide, and impiety and prophaneneſſe of the other ſide) is, That it is not declared by the State nor any known Law, how far the Civil Magiſtrate is *Cuſtos utriuſque tabulæ*, my meaning is, that it's not ſet down, or determined, (that it may be known to the people) (a) how far the Civil power hath to do in matters appertaining to Religion, and what thoſe iniquities are, which (as (b) *Job* ſaith) are to be puniſhed by the Judges, and then wherein the conſciences of men are free, and not to be trampled upon by the Temporal power: (c) Striſes about Religion are there moſt pernitious and deſtructive, where proviſion is not made for diſſen-

(a) Weemſe. Expo. M. L. Ex. 11. p. 8.
(b) Job 31. 11. 28.
(c) Grotius Pol. Max, par. 1. cap. 2. pag. 12. *and* Carol. *in fine.*

diſſentors: (*d*) It was an Impious opinion of the *Court* Paraſites of this laſt age, that the Laws of men in indifferent things, did ſimply binde the conſcience, and that every breach of ſuch Law leaves a ſtain in the Soul. This I found to be a *Common* principle amongſt ſuch as were very learned, ſerving to uphold the Biſhops Tyrannical *Cannons*, and Injunctions, and likewiſe pretended as neceſſary to uphold the Supream power in Magiſtracy: But this Doctrine clearly makes the Laws of men heavier than the Laws of God, becauſe the Laws of men are more in number, uncertain, and ſometimes repugnant, and then men were bounden to ſtudy them as much as the Laws of God, becauſe the ignorance thereof was ſin: This opinion was endeavoured to be upheld, or rather ſweetned with another, as Ridiculous, *viz.* that where an offence is committed, if the pecuniary mulct, or Fyne impoſed by ſuch Law be paid, this is a ſatisfaction for the breach of the Law, and takes away the guilt. If this be true, then may the conſcience be purged by ſomething elſe, (*viz.* by money) beſides the bloud of *Chriſt*, which is as Impious an opinion as the former: It is therefore I conceive ſafe to hold that the Laws of men do not ſimply binde the conſcience, but in reference to the Laws of God, and in caſe of ſcandal and contempt, and yet that the powers ſet over men by the Almighty God are to be obeyed for conſcience ſake, (*e*) but that the ſpiritual power, ſhould be helped out by the Civil ſword, is a groſſe vanity.

A (*f*) great Learned man, and wiſe Polititian hath obſerved, that force is not to be uſed for reducing of Subjects from Sects and factions, becauſe puniſhments make the mindes of men more ſtubburn and froward, and the greateſt puniſhments do the leaſt good, the way to reduce ſtraying Subjects is the devout profeſſion of the true Religion. *Theodoſius Thelder* (although he abhorred the opinion of the *Arrians*) by his toleration of them drew them from their errour more than if he had perſecuted them.

2 That there is not a ſtrict Law for true printing the holy Scriptures, and to puniſh the abuſe of falſe printing of them is a ſinfull

(d) *Princes muſt carefully diſtinguiſh their juriſdiction from that of Gods. Thoſe which confeſſe that they hold their lives and ſoules of God, ought to acknowledge, they have no right to impoſe any Tribute upon ſoules. God principally exacts his right from the Soule.* Jun. Brut. Vind. contra Tyran. p. 12. *Confer. between* W. P. *late Chaplain to* K. C. *And* A. B. *The Emperours Trajan* Adrian, Antonine, *finiſhed their dayes in Peace, for that although they knew not the true God: yet they permitted the Chriſtians the exerciſe of their Religion.* Jun. Brut. *ut ſupra.* p. 14.

S 2

Faith and Religion cannot be enforced, God hath onely power over mens hearts and conſciences. Hawk. Right Dom. l. 3. cap. 2. pag. 125, 126, 127. and cap 3. pag. 129, 130. (*e*) *Cock. Eſſay.* pag. 141. (*f*) Bodin. *Republ.* l. 4. cap. pag. 537. Religionem imperare non poſſumus, quia nemo cogitur ut credat invitus. Ex Epiſtola. Theodorici. *Reg. Gotho.* p. 539.

sinfull defect, there are some Editions, which I believe have near one thousand faults in them, and the Parliament once had it in hand to do something in reformation thereof, and some Godly men were imployed to observe the mistakes, about such time as *John Bill* was the then Kings Printer, at which time amongst other great faults, this was observed to be one, that where it was read the Lord will deliver his people, it was printed the Lord will destroy his people, and many other great mistakes I could instance: the Parliament did nothing then to amend it, and since the Translation is grown far worse: Insomuch that there is not any *Play book*, *Romance*, or idle story printed so falsly as the holy Bible: if the Jews had dealt with us, as we deal with the Ages to come, we had not been certain of a foundation for our faith, nor could have cleared the Text from corruption, and if corrupted in one place, it may as well be corrupted in an hundred and a thousand, which had stroke at the very foundation of our faith, but through the good providence of God, the Jews in the time of *Ezra:* (who were reputed the Chief of the *Masorites*, and afterwards even since Christ, had so much care of the Oracles of God, that they numbred all the words; yea, Syllables and Letters of the Old Testament, and observed how many times every Letter was repeated, and by this they examined every written Copy, and if a Copy had but a word, or one Letter mistaken, it was never allowed as an Authentick Copy to be read in their Synagogues, but was onely allowed for children to learn by. O admirable providence of Almighty God! this care of the Jews is to be imitated by Christians.

See the Guilt Bibles commonly fould, and the little Bibles.

Weemse Expo. *M. L.* Ex. 12. p. 110. *Hayn view Scripture.* pag. 71. 165. Ex Hugone Broughton. *Augusti.* de Civitate dei Trea. *Of the Hebrew Text. Bellar.* l. 2. c. 2. De verbo dei.

The holy Scriptures had need to be review'd, and the Translation amended, especially where they are observed by the Learned to be falsly translated, *Gen.* 44. 5. 2 *Kings* 5. 18. *Judg.* 11. 40. *Act.* 14. 23. *Phil.* 1. 21.

Gen. 44. 5, 15.

That place of *Genesis*, where it's spoken of *Josephs* Cup, the Learned observe that it should not be Translated whereby he Divineth, for this were to make *Joseph* a Sorcerer, or little better then a Conjurer: but the words are to be read (g) for which he would make search. And then the sense is. That *Joseph* using to drink in that Cup, when he went to meat would search (or enquire) for it, and so would presently misse it. And this is agreeable to the Scope of the Context. The intent being to convince

Broughton on this place Ground of holy Storie. pag 10. *So* M. E. *upon the place.*

Josephs

Joſephs brethren of their ſuppoſed indiſcretion in ſtealing that Cup, but the true cauſe was: That there might be occaſion to bring them back again, that *Joſeph* might make himſelf known to them.

That place in the ſecond of *Kings*, concerning *Naaman* the *Syrian* being rendred in the ſenſe of the future tence: When my Maſter goeth (or ſhall go) into the houſe of *Rimmon*, &c. And I bowe my ſelf in the houſe *Rimmon*: The Lord Pardon thy ſervant in this thing, *&c.* It is obſerved that the ſenſe of the future & *Preterperfect Tenſes*, among the *Hebrews* are ſometimes uſed one for the other, and ſo Tranſlated, and ſo it is in this place: And then the ſenſe in the *Preterperfect tence*, is, when my Maſter went (or hath gone) into the houſe of *Rimmon*, and I bowed my ſelf in the houſe of *Rimmon*: The Lord Pardon thy ſervant in this thing. 2 Kings 5. 18. Ven. *on theſe words.*

This Tranſlation is obſerved to be juſtified by that in the Titles of the 51 and 52 *Pſalms*. And well agrees with the Scope of the ſtory: which was to ſhew that *Naaman*, by the Miracle of healing with the word applied by the Prophet, was converted from Paganiſme to vvorſhip the true God, and the ſame well ſuits with the Prophets anſwer to *Naamans* Petition, go in peace. (h) *Calvin* conſiders *Naaman* as a new Convert, and one that had ſome knowledge of Chriſt. The common reading makes *Naaman* a groſſe Hypocrite, praying to be diſpenced with in his beloved ſin: and it ſeems to charge the Prophet with unfaithfulneſſe, in not reproving *Naaman* for this reſervation (which could not have ſtood with true repentance) but rather incouraging him: Saying, go in peace: which inconveniences are all taken away by rendring the words in the ſence of the *Preterperfect tence*. (h) *Calvin.* Inſtitut. l. 3. cap. 2. f. 32.

That in *Judges* 11. concerning *Jephthah* his vow, and concerning his daughter. The laſt Tranſlation ſeems to countenance ſuch horrible Murder as was committed by the Heathen Gentiles, and ſometimes by the Idolatrous *Iſraelites* in ſacrificing their Children to Devils. The word in the laſt verſe Tranſlated lament the daughter of *Jephthah*, being rendred according to the Marginal reading; To confer, or talk with the daughter of *Jephthah*, ſufficiently clears the matter: And lets us know that ſhe was not murdered, or offered for a burnt-offering: But that ſhe was Judges 11. 30. 39. 40. Piſcator. *on the Place.*

redeemed as God had appointed in the (*i*) Law, but was dedicated to be a ſervant in the houſe of God, as *Samuel* was. This reading agrees with that *verſ.* 38. ſhe bewayled her Virginity, not her death. This Act of *Jephthah* is judged to be an Act of his faith, for which he is commended, *Heb.* 11. 32. If he had murdered his daughter he would have been reproved for it, which he is not. Therefore we muſt conceive that *Jephthah*'s vow was Conditonal, that if that which had met him coming out of the doors of his houſe, had been a thing which might have been offered (for a Dog, or a Swine might have met him, which might not be offered in Sacrifice) he would have offered it to the Lord: If otherwiſe, it were a thing not to be offered, and might be redeemed, he would redeem it, and offer ſomething in lieu thereof. As *Abraham* did the Lambe, inſtead of his Son.

(*i*) Lev. 27. 2, 3. Num. 18. 15. Exod. 34. 20.

Vers 31.

There are divers things in the New Teſtament, which ought to be cleared in point of Tranſlation. That *Acts* 14. 23. Tranſlated when they had ordained them Elders in every *C*hurch. The Text being χειροτονήσαντες αὐτοῖς πρεσβυτέρους, is (*k*) truely read, they Created them Elders by ſuffrages, which in the *Geneva* Tranſlation is rendred, they ordained them Elders by Election. But this word Election, ſignified by extending, or lifting up the hands of the people, the late Tranſlators *Holyoke*, *Belcanqual*, and their fellows, (being Epiſcopal men) made ſhift to thruſt out of the Text: That they might preſerve the Biſhops power of ordination, as our Presbyters do now, who tell us that the Church, *Math.* 18. 17. is but the Presbytery, or repreſentative *C*hurch: which expoſition is juſtified by no Scripture, for the word Church is either taken for the (*l*) Members (without the Officers) called brethren, or elſe for the Officers and Members together.

Acts 14. 23.

(*k*) Paſor Lex. pag. 609. A. Quaque ipſis per ſuffragia creaſſent Presbyteros.

2 Corint. 8. 19

(*l*) Acts 15. 3, 4, 12, 23. and 13. 1.

That in *Phil.* 1. 21. ἐμοὶ γὰρ τὸ ζῆν χριστός, καὶ τὸ ἀποθανεῖν κέρδος. The new Tranſlation reads Grammatically out of the Vulgar Latine: For to me to live is Chriſt, & (to dye is gain, which is perfect non-ſence. The two infinitive Moods without wronging the Text may be either tranſlated ſubſtantively, or as participles, and then the ſence is: for Chriſt is to me in life and death (or living and dying gain (or advantage) which is according to the *Geneva* Tranſlation, and ſuits with the ſence of the fore-going verſe. Chriſt ſhall be magnified in my body whether it be by life, or by death.

Phil. 1. 21.

For

For these and many other causes, which might be shewed, it were fit, a more perfect Translation of the holy Scriptures were had and published.

3. In the next place I set it down as a sinfull defect, that there is no Law against swearing by Creatures, as the Sun, Light, the Bread, the Drink, the Money, and such like, which Oathes are very common amongst the prophane and ignorant multitude, and are as bad, if not worse, than prophane swearing by the holy name of God, *Math.* 5. 34, 35. *Exod.* 23. 13. *Isa.* 65. 16. *Amos* 8. 14.

Jerem. 5. 7. Perk. *on the Decal.* Com. 3. vol. 1. pag. 42. col. 2.

4. The like may be said of swearing by *Idols*, as the *Crosse*, the Masse, the Rood, or by Saints, as Saint *Mary*, by our Lady, by Imaginary Saints, as Saint *George*, by Faith, and Troth, *&c.* the like may be said of wicked cursing against our selves, or others, as Pox, Plague, the Devil rot thee, and the like, *&c.* these are all unlawfull, & yet we have no Law against them, their unlawfulnes appears by these Scriptures, *Ier.* 4. 2. and 5. 7. *Psal.* 109. 17. and *Psal.* 115 8. *Dent.* 6. 13. *Willet. Hex.* in *Exod.* chap. 20. pag. 347.

That place Matth. 23. 22. *Condemneth such swearing* Perk. *on the Decal.* Com. 3. vol. 1. pag. 42. col. 2.

5. The use of Lots in sport is a sinfull thing (and no Law against it) as (m) Carding, Dicing, Playing at such Games, as wherein is no use, or exercise of skill, or memory,) but meer chance (as it's called) these are a sporting with the Divine providence of God, which is not to be meddled with, but with great reverence, and Lots are to be used onely in weighty matters, for that therein Almighty God is immediately appealed unto, as Judge and determiner of the controversie: So they may be used in chusing of Officers, or Governours (where God hath not declared his will) or in division of inheritances, and such like. The use of these Lots in other cases is unwarrantable, *Prov.* 16. 16, 33. *Levit.* 16. 9. *Perkins* on the third commandment, *vol.* 1. pag. 43. *Acts* 13. 19.

(m) *The use of Cardes dice and the very Sale of them are prohibited by the Lawes of* Geneva. *Lawes* Geneva. pag. 30. 36.

6. The like may be said of Gaming and playing for great sums of money, the same is a horrible sin, and the cause of many other sins, there is unlawfull getting, and unlawfull spending, with unnecessary expence of precious time, every Lawfull means of getting is sanctified by the word of God and prayer, Gaming for money is not sanctified by the word of God and prayer: *Ergo*, Gaming for money is no Lawfull means of getting. The Major of this Proposition is the Scripture it self, all things, *i.e.* all Lawfull

full things are ſanctified by the word of God and prayer, the Minor is undeniable, there being no word of God to vvarrant ſuch a courſe of getting, and what man upon any ground of Scripture, or word of faith, can, or dare go to God, and pray that he may win: Now whatſoever is not of faith is ſin, therefore the conſequence is clear, that ſuch Gaming for money is unlawfull.

2. Secondly, beſides every Lawfull means of getting may be made a trade, or profeſſion to live by, but no man will be ſo impudent as to ſay that Gaming may be made a trade to live by, all that can be ſaid, is, that it is but recreation, and no man living can juſtifie to ſpend all his life in play, or recreation, for God hath ordained that men ſhould have Lawfull callings, and continue in them, and therein exerciſe themſelves with pains and diligence, that every man ſhould eat his bread in the ſweat of his face, which by a *Metonymis* of the *Adjunct*, (or rather of the effect) ſignifieth that he ſhould labour in ſome Lawfull calling: *Adam* in Paradiſe was not exempted from this, and upon this ground the lives of all Vagrants, and ſuch as follow no Lawfull calling are condemned.

3. And further, God never ordained Gaming to be a means to transfer Eſtates from one to another, but hath ordained, buying, ſelling, giving, exchanging, earning by labour, merchandize, ſearching into the ſecrets of nature, for improving of the Creatures and ſuch like, to, and for that uſe and end, to the upholding of humane ſociety and commerce, that men in a Common-wealth might be helpfull one to another: But where men either get, or looſe by ſuch unwarrantable courſes which God never ordained, they may expect the curſe of God, and not his bleſſing.

4. Laſtly, there are as many miſchiefs, and abominations follow this courſe of Gaming, and the iſſue is commonly as accurſed, as of any wickedneſſe which men commit, what curſing, ſwearing, quarreling, fighting, cheating, thieving, and murders are occaſioned by this practice, eſpecially when men looſe their monies: The concluſion and *Cataſtrophe*, for the moſt part to all great Gameſters, is beggery, the Goal, or the Gallowes, their Wives, Children, and Families ruined, and deſtroyed by this means, and yet no Law againſt it, being uſed in private houſes.

And if one of a thouſand get an Eſtate by this courſe of life, being

being a kinde of theft, I will not say (as it's affirmd, King *James* said in this case) he that wins, wins Hell, and he that loseth, loseth Heaven; but this I'le say, that usually that which is gotten by play, is but *Aurum Tholosanum*, such Gold as corrupts and eats out all the rest of a mans Estate, and procureth that curse, which is spoken of in the Propheſie of *Zacharie*, which utterly destroyeth & consumeth mens houses, with all their increase, and without repentance and restitution, where there is ability, the Estates of mens Souls are thereby endangered. There ought to be a provision made against this Canker of the Common-wealth by some just and severe Law, *Gen.* 3. 19. 2 *Thes.* 3. 11. *Boltons Direct.* pag. 155. *Balington* upon the 8th. *Com. Perkins* on the 8th. *Com.* 1. vol. pag. 62. 63. By (*n*) the Laws of *Geneva*, no man may play at any Game for Gold, Silver, Money, or money-worth, upon pain of three dayes imprisonment.

(*n*) *Laws Geneva.* pag. 30.

7. Next unto Gaming, as things unlawfull before God, and yet not condemned by our Law; are Bear-bating, Bull-bating, Cock-fighting, Horse-racing, and (*o*) the like cruel abuses of the Creatures; the three first being nothing else, but meer jesting and sporting in sin, and the curst effect of sin, *viz.* the Antipathy of the *C*reatures, which grew through the fall of man, and at the best, such as use, and delight in these cruel sports (as they are termed) shew themselves to be (*p*) unrighteous men, of hard hearts, bloudy and cruel mindes, having no mercy, nor sence of sin, or the effects, or evils, which attend and follow this unlawfull abuse of the *C*reatures. (*q*) The Jews had many Laws prohibiting cruelty to the Creatures, and instructing them in mercy, and compassion towards them. (*r*) *Quintilian* reports, that the *Athenians* condemned a Boy to death for putting out the eyes of Quailes, because it was a sign of a cruel minde, and that he was like to prove a pernicious instrument; to this may be added, the Horselike racing, & laqueing of boyes and men after their Masters, being too great an oppression to be used towards our fellow creatures. There ought to be a Law to restrain such Barbarous cruelty, and to preserve the poor innocent sensitive *C*reatures, which Almighty God hath made, and given for better use, and likewise to guard and save rationall men from such slavery. (*s*) *Absolon* is said to have 50 men to run before him, as a *præludium* to his Rebellion, (*t*) and in like manner *Adoniah*; Princes

(*o*) Bolton *Direct.* pag. 154, 155, 156.

(*p*) Pro. 12. 10.

(*q*) Exo. 23. 19. Deut. 14. 21. and 22. 6, 7. Math. 5. 7. Luke 6. 36.

(*r*) *Rous* Ar. Ante. l. 3. c. pag. 129.

(*s*) 2 Sam. 15. 1.

(*t*) 1 Kings 1. 5.

and great men may, and muſt have their attendance, both for neceſſity and ſtate, but it's againſt the Law of God and reaſon to enforce men to run as faſt as horſes.

8. The like may be ſaid of all that Rabble, or ſcum of the people, who, (beſides the Gentry, which for the moſt part are the occaſion of ſuch meetings) as fit attendants upon thoſe wicked ſports, are (*u*) Stage-players, Jeſters, a Company of theſe idle fellows being fled from *Rome* to *Tibur*, the *Tiburtines* finding them all drunk, lodged them in ſeveral Carts, as in Beds, and ſo conveyed them to *Rome* again, before they knew where they were; a fair riddance of them; Fidlers, Rymers, Bag-pipers, Juglers, Tumblers, Vaunters, Dancers upon the Rope, Bear-wards, Ape-carriers, Puppet-players, Ballad-ſingers, and ſuch like idle fellows, who live in no (*x*) lawfull calling, theſe (unleſſe they be taken wandring abroad out of their Pariſhes as Rogues) are not puniſhable, there is no Law againſt them, ſimply for living by ſuch unlawfull means, without any profitable labour, of being of any uſe in the Common-wealth. Theſe ſerve chiefly (as experience ſhewed in the laſt vvars) to do what miſchief they can in the Common-wealth, as occaſion is offered. And although theſe Miſcreants do wander abroad, and ſo juſtly incurre the danger of the Laws made againſt Rogues and Vagrants, yet their ſports are ſo ſutable to the luſts of men, that hardly any man will, or dare apprehend them. There ought to be a Law to inforce theſe to work and labour, and leave their idle courſes, *Hoſea.* 7. 3. *Eph.* 4. 28. 1 *Theſ.* 3. 10. 2 *Theſ.* 3. 9. At *Geneva* there is a Law that idle perſons loſing their time ſhall be puniſhed, and ſo enforced to work, and follow ſome Lawfull calling. Laws *Geneva*, pag. 30. 37. (*y*) Stage-players were prohibited by the civilized Heathen, and the Comœdians ſtage is concluded by the vviſeſt Polititians to be the Apprentiſhip of all impudence, looſeneſſe, vvhoredom, cozenage, deceit, and wickedneſſe.

(u) *This was uſed in* Rome, *as the Hiſtorian ſaith, for appeaſing the heavenly Ire in time of Plague, which the ſame Hiſtorian, being a Heathen calls ſuperſtition. Hence, we have our mad ſports, much like the* Romans Bacchanalia. Tit. Livius. l. 7. p. 250. K. Tac. 1. *Annal.* l. 1. cap. 16. pag. 31. Seneca *declaims againſt theſe* Cæl. Rhod. l. 8. c. 7. pag. 289. *A* Senatour *might not enter into a Playhouſe.* Tit. Liv. l. 9. pag. 335. E.

The wandring Quakers may be reckoned among the number of idle perſons, and are alſo like the Bacchanales *at* Rome, *whoſe Religion was to hold lawfull all manner of filthineſſe, yet they had a Chappel and Prieſts. They uſed to ſhake and wagg their bodies as if they were diſtracted, and then to divine and pretend to ſore tell things to come, as the Quakers do.* Tit. Liv. lib. 39. pag. 1031. *A. They ought to be reſtained.* (*x*) Ariſtotle, Seneca, *and* Solon, *diſallowed of Stage-players.* (*y*) Bodinus *thus cenſures Stage-players and Comedians.* Bodin. *Republ.* l. 6. cap. 1. pag. 645.

9. In

9. In the next place, as adjuncts alſo of theſe meetings I ſet down as unlawfull, and againſt which we have no humane Law, ſinging of baudy ſongs, Ribaldry, and rotten Communication, which tend to the corrupting of good manners, and ought to be obviated by ſome wholeſom Law, *Eph.*4.29. 1 *Cor.* 15. All this filthineſſe is prohibited by Law at *Geneva*, upon pain of three dayes impriſonment, with bread and water, Laws *Geneva.* pag. 32.36,37.

Geneva hath a Law againſt this prophaneſs. Laws. Geneſ. p.32. 36,37.

10. The like may be ſaid of railing, mocking, reviling, opprobrious language, taunting, and ſuch like abuſes, againſt which there is no Law, except it be for womens ſcoulding, and where the words are actionable; although theſe abuſes are prohibited by Laws in other Countreys, Laws *Geneva.* pag. 32. 37. And the ſame are condemned by the Law of God, 1 *Cor.*6.10. 2 *Sam.*16. 7. and 6.20. *Iſa.*58.22. *Gen.*37.19. *Neh.*4.3.

The late ordinance for prohibiting of Duells, and Provocations there unto doth extend onely to provoking words and carriage, tending to Challenges.

In all Nations generally, they that are moſt zealous & imminent in the profeſſion of that Religion uſed, and profeſſed amongſt them, are alwayes moſt honoured and eſteemed. And yet in *England* heretofore nothing hath been more in diſgrace, than to be accounted a Zealot, or forward in Religion.

King James in his book of Libertie, preſers the Papiſts before the Puritans.

11. No more is there any Law againſt prophane jeſting with the holy Scriptures, (unleſſe it be in Playes, and Interludes) nor for ſpeaking contemptuouſly, or vilifying the ſame holy word of God, or the Divine Authority thereof, this ought the more to be cared for, for in regard the Devil hath ſent abroad ſo many in this age to caſt aſpertions, and contempt upon the word of God, contained in the holy Scriptures, which God hath magnified above all his Name, or whatſoever he is made known by, *Exod.*20.7. *Deut.*5.11. *Pſal.*111.9. *Iſa.*66.2.

This is great wickedneſſe in the Heathen; That when they abuſed the Chriſtians in the Primitive times, upon complaint to the Emperour, he anſwered them with this ſcoffe, you are to ſuffer injuries patiently, for ſo they are commanded by your God. Perk. *on the* 3. Com. vol. 1 pag. 44. col. 2. Ex Tripart. Hiſt. cap. 39. l. 6.

Charged as a

12. There is no competent Law againſt Men-ſtealers, which are now more common in *England*, than in former times, when the Judges were undiſcovered, theſe wretched Creatures are cal-

They were amongſt the Romans ſuch as (like the Banditi in

Naples, the Tories *in* Ireland, *and the Moſſe-Troopers in the North*) *ſnapt'd up Travellers, & ſuch as they could catch, they either kept them to work as ſlaves, or made them away: Theſe were ſeverely puniſhed, who were found guilty of ſuch vilanies, as* Tit. Liv. & Suetonius *both report.*

led ſpirits, and are either men, or women, well known to ſuch as entertain them, or ſet them on work; the men intice and ſteal away Men, or Boys, upon pretence of profitable imployment, or ſervice under men of quality, the Women ſteal away Children with Apples, and ſuch like toyes, or bigger vvenches, or Boyes upon other falſe pretences, and when they have gotten them into houſes near the water-ſide, they keep them there untill they can have opportunity to ſhip them away to the *Indies* againſt their wills. This is an horrible offence againſt God, and ſuch Thieves ſhould be puniſhed with death, and their confederates by ſome ſevere puniſhment made examples, *Exod.*21.16. *Deut.* 24.7. 1 *Cor.*6.6.

The Laws of New England are collected into a body, and indeavoured to be made agreable to the Jews, Law morall and judiciall. Lechford News. pag.26,27.

13. That there is not a body of Law extant, declaring in ſhort what the Law is, and how men ſhould obey it, is to be accounted a great defect, and ought to be ſupplied with ſome Treatiſe to be agreed upon by the Legiſlative power, comprehending the heads to which all caſes are to be referred, which are to be agreeble to Scripture rules: Sr. *Henry Finch*, hath writ a book wherein he intended ſuch a thing, which is lately abridged by *E. W.* Eſq; and may be peruſed: This (z) courſe hath been held I ſuppoſe by all States, and Nations which are civilized, moſt preciſely by the *Grecians* and * *Romans*, and likewiſe the Cuſtome of *Normandy* ſeems to be the body of their Law; It's ſaid to be agreeable to the Laws of *England*, but comprehends, as ours do, the whole body of Popery (in a manner) and many other ſinfull Cuſtomes. The whole body of the Jews Political and Moral Laws, are all recorded in the holy Scriptures (as before is ſaid) & are comprehended in a very little Compaſſe. The Laws of *Geneva* may be read over in two, or three hours. The want of ſuch a body of Law in *France*, makes their proceedings over-tedious, and uncertain, and is the cauſe of many Suits, following partly the courſe of the Civil Law, and partly the Laws of *Normandy*, and other Cuſtomes: Inſomuch that *John Bodin*, that famous Lawyer, and States man com-

The Romans collected their Laws into a body which they accounted the end of Law and equitie. Tac. Annal. cap.5. pag.71.

(z) K. Edward the Confeſſor out of an indigeſted Raphodii of the Laws of the

Romans, Engliſh & Danes, *ſelected the beſt, & compiled them into a Compendious ſyſteme.* Hawkright of Domi. l.2. pag. 67. *Ex* Cook. 3. Rep. Ep. ad Lect. * *The Godly Emperour* Theodoſius *the ſecond, collected the Laws of Kings and Princes into a ſhort volume, hee was invited by* Juſtiman, *whoſe book is famous amongſt the* Civilians, *and is much in conformitie with* Moſes Juditials, Sympſon, (*hu. Hiſtor. Life* Theo. 2. pag. 81. *See the Laws of* Geneva *printed.* Rawleighs *Hiſt.* l.2. cap.4. §.15. Bodin. *Republ.* l.6. c.6. pag.766.

complained that there were more Suites in *France*, than in all *Europe* beſides.

14. In the next place I preſume to ſet it down as a moſt material want, and ſinfull defect in the Law, that (*) there are no wiſe men appointed to take up controverſies to prevent Suites, before men begin to deſtroy, and undo one another: By the rules of Scripture we ſhould ſeek peace, and purſue it, reconcile our ſelves to our adverſaries, much more to our brethren; the contrary practice of many men in theſe dayes (who when they are offered ſatisfaction for debts forgotton, or unknown, or unvoluntary treſpaſſes after the Suit began, if they would declare what they demand, will be ready to anſwer, you ſhall know my demand when you ſee my Declaration) is (a) worſe than God would have his people deal with the *Canaanites*, to whom they are commanded to offer peace: (b) Now the *Grecians* at *Athens* had certain Citizens, who where deſigned to compromit differences, and to take up matters in controverſie, and there was no cauſe came into any *C*ourt, exceeding the value of ten Drachmes, which had not firſt paſt theſe mens hands, (c) and the *Romanes* had an Officer, whoſe Office was to over-ſee mens demands, and to allow of their Bills, (as is now uſed and practiſed at *Venice*) that men might not by exactions devour, and eat upon another, or bring themſelves into Suites, and trouble without cauſe, (d) the rules for ordering this matter are clearly ſet down in holy Scripture, 1 *Cor.* 6.5,6. *Math.*5.25. *Deut.*20.10, *Numb.*21.22.

(*) *Cooke* Eſſa. pag. 172.

Weemſe Expo. *Indit. Laws.* Exer. 43. p.166.

(a) *And* Weemſe. *Exp.* M. L. Com.3. Exer.8. de Jur. Micanto p.172, 172.

(b) *Godw. Ant.* l.3. c.3. Sect.4. The Grecians *Drachma was* 1.s. ob. *the* Romans. 7.½ ob. Tac. Explicat. Polib. p.224.

(c) Godw. *Rom.* Ant. l.3. ſect.1.c.9.

(d) *Law ſhould be the laſt refuge, and uſed as Phiſicians uſe deſperate Medicines, in caſe of neceſſitie.* Perk. vol. 1: Moral Obſer.

15. There is no conſiderable Law againſt a rebellious ſon, a ſon of *Belial*, or (f) without Yoke, who deſpiſeth, curſeth, or revileth his Parents, and will live in no order, or calling, ſuch a one can hardly by the Law be bound to his good behaviour, becauſe it is not a publick offence, but beſides that, we have no Law, to puniſh him, whereas ſuch a one ſhould be put to death, *Levit.* 20.9. *Mar.*7.10. *Prov.*15.20. *Exo.*21.17. 1 *Pet.*1.14. *Deut.*21. 20,21. Diſobedient *C*hildren are reckoned amongſt the worſt of ſinners and wicked men, 2 *Tim.*3.2.

(f) *Willet Hexa*, in Exo. 21. 15.

16. Neither

pag. 66. *on the* 8. Com. col. 1. Gouge. *on the* 6. Epheſ. Treat.5. pag. 251. Col.2. Tit. 1. 6.

Cowel. Inſtit. l. 1. tit. 10. ſect. 3. p. 43.

16. Neither is there any Law againſt (g) Marriage without Parents conſent, nor againſt Marriage of young Children, unleſſe the parties be Heirs, or Inheritrixes, nor againſt (h) chuſing callings without Parents conſent, which things (being meerly civil) ought to be provided for by the Civil Magiſtrate; to the end, that Parents may not loſe their Authority in their own houſes, *Gen.* 27.46. *Heſt.* 1.22. 1 *Sam.* 16.11,19. 1 *Sam.* 17.17. *Jer.* 35.6,7. *Deut.* 7.3. The learned have determined that Marriage without, or againſt Parents conſent, (unleſſe it be for exceeding weighty reaſons) to be of no force.

(g) The *Heathen obſerved this, to have conſent of Parents in Marriages. Sheckem.* Gen. 34. 3.

(h) *Calvin. Inſt.* l. 4. c. 19. ſ. 37. Gouge. *on* Epheſ. 6. Treat. 5. p. 254. Col 2. and p. 252. Col. 2. and 255. Col. 1. *Eraſm.* Collo. de Matrimo.

* 2 Corint. 6. 14. Gouge *on* Epheſ. 6. Treat. 2. p. 112. col. 1. *Chriſoſt.* M. 1 Corint. 7. hom. 19.

17. There is no Law againſt Marriage with * Infidels, or Idolaters, which is againſt the Law of God, & the old vvorld are taxed for it, and the off-ſpring of theſe Marriages were theſe Gyants, and Monſters of men, who filled the vvorld with oppreſſion and violence, and were an eſpecial procuring cauſe of the general deluge, *Gen.* 6.1. *Mal.* 2.11. *Ezra* 9.14. 1 *Kings* 11.1,2.

Idiota à nativitate non recipitur, vel ad agendum, vel ad defendendum in aliqua cauſa, per cuſtodem vel proximum propinquum ſed ſequentur, quod ipſe ſemper præſens ſit in propria perſona. Cowel. Inſtit. l. 1. tit. 23. ſect. 6. p. 74.

18. There is no conſiderable Law, nor certain rule for ordering the Eſtates of Lunaticks, Mad-men, and Idiots, the late diſpoſing of them by the Court of Wards was a coſtly way, & ſomewhat uncertain, & inconvenient, becauſe the Committees of ſuch men, (being not known to the Court) did many times oppreſſe and abuſe ſuch as were committed to them, and rather endeavoured to keep them mad and fooliſh that they might have their Eſtates, than to take any care to cure them: there was an ancient Law found, and recorded among the (i) *Normans* Laws, for ordering the Eſtates of ſuch as they termed *furioſi*, or Mad-men, but it is out of uſe. There ought to be ſome certain rules, and directions given to godly men to ſupply this defect, and it were beſt if it were ſo done in every County, *Cook Eſſay.* pag. 170. the Supream Magiſtrate is as the father of the Common-wealth, and therefore to care for all the Members thereof, *Iſa.* 49.23.

Homer call's *Agamemnon* † ποίμενα λαῶν the Paſtor of the people.

By this Law, more is required of an Idoit, or Fool, than of a wiſe man, and ſo the Law is fit for none but Fools. Conſuet. Norm. Tit. de furioſis. 14.17. † David *was the Paſtor, or Feeder of Gods people, and he did it skilfully and carefully*, Pſal. 78. 71, 72. *The King of* England *called* Sponſus Regni. Cook. Hawk. R. Dominion. p. 102.

ple. *Abimelech* is *Pater Meus*. The Roman Emperours, *Patres Patriæ*. *Seneca* calls Kings, *Tutores status Publici*. The *Græcians* Βασιλεῖς, *quod sint Balis Populus*: These names shew the duty of the Supream Magistrate.

19. Amongst the ranges of Mad-men and Idiots, I presume to place notorious unthrifts (as (k) the *Romans* did) of which there are many in this age, such Knights & Esquires of whom *Erasmus* speaks to one scoffingly; *Nisis bonus Aleator, probus Chartarius Scortator improbus, Potator strenuus, Profusor audax, Decoctor & Conflator æris alieni, Scabiæ Galico denique ornatus, vix quisquam te credet equitem*, such mens Estates ought to be (l) committed to wiser men, & to be preserved for posterity, & to the end their vvives & children may be provided for, and that such as cannot tell how to govern themselves, may be put to their allowance: If this course were taken it would secure inheritances, far better than those unjust Intails upon the Heirs Male, and would prevent abundance of sinfull expence, and other transgression, and therefore I think it an offence that there is no Law in this kind, 1 *Tim.* 5.8. *Isa* 49.23.

(k) *Godw. Ant.* Rom l.3. sect.4. c 24. *Erasmus* Colloq. Ἱππεὺς ἀνίππος. p.383. *Equis sive equo.*

(l) *Prodigals estates are by Authoritie of Justice to be committed to suffer their estates to be ordered and disposed of by others.*

20. The Law hath not put any restraint upon such as keep Riotous houses, and account it a point of honour, and great house keeping, which they think tends much to their credit, to spend their vvine and Beer, that their servants and attendants may make men drunk, who come to their houses, and that is accounted free and bountifull entertainment: In the mean while this is a great offence against God, and ought to be prevented by some good Law, *Isa.* 5.11, 22. 2 *Sam.* 11.13. 1 *Kings* 16.9. *Luke* 21. 34. *Prov.* 23.19.

Jun. Brut. vind. contra Tyrann. p.88. The Romans *punished such Revelling, calling them Conventicles.* Tit. Liv. l.39. Augustus Cæsar, *was a pattern of sobrietie and temperance.* Sueton. in August. Perk. *on the Decal.* Com.7. vol.1. p.61. col.2.

21 There is no (m) considerable Law in force against Adultery, or Fornication, except the Act of the 10. of *May*, Anno 1650. The former Statutes provided, that the Adulterer, or Fornicator should keep the Bastard, and nothing else considerable imposed upon him. The last Act is so penned, that few, or none will ever be convicted upon it: Insomuch, that it hath been thought that that Statute was made onely, or chiefly for guarding of womens credits, that lewd persons might not dare to boast of their

(m) *Cowel.* Inst. Jur. *Angl.* l.4. tit. ult. sect.53. p.346. *Adulteri maxima pro parte pœnitentia Canonica purgatur.*

The Romans punished Adultery with death and so they did Sodomie and murder. Tit. Liv. l. 39. p. 1032. & p. 1034. K. *And its cited out of* Plato. l. 9. de legibus, *that the Adulterer was to suffer death, and might have been slain by the Husband of the woman, if he escaped the Law,* Cœl. Rhodig. Lect. Antiqr. l. 29. c. 18. p. 1131. (n) *Florus* in l. 14. Tit. Liv. p. 389. E. * M. L. 20. p. 391. E. *Tacit. Anal.* l. 11. c. 1. p. 141. and c. 2. p. 142. and c. 11. p. 153.

their own filthineſſe, to the diſcredit of womens perſons, whether clear, or guilty, whereby it's come, to paſſe that this horrible ſin of whoredom is much increaſed ſince that Act was made (as may be ſeen in many places) which Act is ſo cautiouſly penned, that a man ſhall not be (in ſtrictneſſe of Law) in danger of death, unleſſe it appear there was *Res in Re*, and that the Adulterer knew the vvhore to be a Married vvoman, which none can tell, but ſuch as were preſent at the Marriage, and beſides, one of the parties cannot be a vvitneſſe againſt the other, as being *particeps Criminis*. This Law ought to be amended, for that by the Law of God, and (n) moſt wiſe Law-givers, the Adulterer, and Adultereſſe ought to ſuffer death, *Deut.* 22. 22, 23, 24. *Jer.* 29. 22, 23. *Lev.* 20. 10. * The Prieſts daughter among the Jews was to ſuffer death for Fornication committed in her fathers houſe, *Lev.* 21. 9. So the *Romans* puniſhed their veſtal Nuns with death, if they were found to play the vvhore, in imitation of the Jews, and according to the Judicial Law above mentioned.

Such filthineſs condemned as fornication Perk. *on the Decal.* vol. 1. p. 59. col. 2. & p. 60. col. 1. *Tacit. Annal.* l. 2. c. 9. p. 74.

22. No more is there any Law againſt laſcivious Geſtures, wanton and filthy dalliance, and familiarity, inſomuch as if two lewd perſons be found in bed together, they can be but Carted, that not being ſufficient to convict them upon the laſt Statute, unleſſe they confeſſe the very filthy Act, *Gal.* 5. 19. *Prov.* 6. 29. *Epheſ.* 5. 3, 4. The Heathen *Romans* had Laws againſt Laſciviouſneſſe, and in *Tyberius* his Reign, women, who were obſerved to live ſoberly and chaſtly with one husband, were had in great Honour; and it was ordained that the Captains and Governours of Provinces ſhould have their wives with them.

This is accounted a breach of the 7th. Commandement Perk. *on the Decal.* vol. 1. p. 60. col. 1. (o) Caut. 4. 1. Weemſe. Exp. M. Law. Exer. 6. com. 7. p. 161.

23. Next to this I add that there is no law againſt whoriſh attire, whereof the Scripture takes notice, and the Learned have obſerv'd ſome parts of that Attire, amongſt which may be accounted ſtrange faſhions, naked breaſts, bare ſhoulders, powdering, ſpotting, painting the face, curling and ſhering of womens hair, the place of the *Canticles*, ſeeing to countenance ſuch Locks, is tranſlated thus by learned *Junius*, (o) thy hair is bound up as the modeſt matrons; theſe with laſcivious mixt dancings and other ſuch like bellows of luſt, & Pandors of filthineſſe are condemned

by

by the word of God, as occaſions of Adultery, and Declarations of the Vanity of the mind, contrary to Chriſtian ſobriety, *Zeph.*1.8. *Pro*7.10. *Gal.*5 9. 1 *Pet.*3.3. 1 *Tim.*2.9. 1 *Cor.*11.6. *Iſa.*3.18, 20. *Junius* upon *Cant.*4.1. The (p) *German* women when they were Heathens, uſed to wear their Cloaths little, differing from mens Apparel, and they uſed to go naked, or bare with their arms, and their breaſts uncovered, as it's now uſed.

(p) Tacit. Hiſt. Deſcrip. Germa. c.2. p. 263.

24. There is no Law to enforce a man to live in any calling; if he will but pretend he hath an Eſtate, or means to maintain himſelf, then he may live as he liſt, eſpecially about *London*, and that is the cauſe there are ſo many Thieves and Robbers, and ſo many Villanies committed, becauſe men live idlely without a calling wherewith to maintain them, (q) all Nations have judged it reaſonable, that every one ſhould have ſome calling, or occupation, and this the Court at *Athens* called (r) *Areopagus* diligently inquired after: and he that was found to live by unjuſt gain, fell into danger of his life by their Law, *Ionah* 1.8. 2 *Theſ.* 3.10,11. 1 *Cor.*7.20. (ſ) A wiſe Stateſman ſaith, that there are many idle perſons in every Citie, whom it's needfull, either to baniſh, or to keep them in publick works, becauſe they can be placed amongſt no degrees of men: And ſaith that *Amaſis* King of *Egypt* uſed to put ſuch kinde of men to death, who had no callings, as Thieves and Robbers; commending the cuſtome at *Paris*, enforcing the ſtrong, and luſty to work, and feeding and curing the ſick and aged.

Idleneſſe deſtroyes all people, the French *did thereby make ſhipwrack of manhood and libertie.*

(q) Tacit. (vita Agric. l. p.188. *Laws* Geneva. p.30.37. *Grotius* Pol. Max. par.1. c.3.p.24,25.

(r) *Rom.* Ant. Ant. l.3. c.1. 95, 96. and l 3. p.125.

The Romans *likewiſe had Laws for incouragement to labour, and for ſuppreſſing of idleneſſe.* Tacit. Annal. l.2. cap.10. p.49. (ſ) Bodin. *Republ.* l.3. cap 8. p.401. and l.6. cap.2. pag.678. Solon *inflicted great puniſhments upon idle perſons.*

25. Neither is there any Law againſt Sword-players, players of Prizes; although it may be a device to cheat the people, and this is the chief end to get company together, yet ſometimes it cometh to paſſe, that they ſlaſh, cut, and wound one another in a fearfull manner, this is a wicked cuſtome taken from the Heathen, and againſt Gods Law, and ſome Law ought to be provided againſt it. Some of the (t) Heathen have reſtrained this wickedneſſe, and (u) *Conſtantine* the firſt Chriſtian Emperour utterly put down, and prohibited the ſame. It was *Abner*, the General of that wicked rebellious *Abſolom*, who firſt ſet up

(t) *Godw.* Ant. Rom. l.2. ſect. 3. c.10. p. 98, 99, 100.

(v) Sympſon. *Chu. Hiſtorie Life of Conſtantine.* p. 61.

up this cruelty under the pretence of play, or ſport, 2 *Sam.* 2. 14. 16.

26. There is no Law againſt Idolatrous Pictures and Images, of which the Picture of Chriſt (as is pretended) is the moſt common, this and ſuch like Pictures are unlawfull, as being teachers of lyes. *Urſinus* condemnes them upon this ground, becauſe Chriſt being both God and man, the Image muſt needs be a lying Image, becauſe it cannot repreſent the God head, whom no man hath ſeen nor can ſee, 1 *Iohn* 4. 12. *Deut.* 4. 15.

Willet, in Exod. 20. 2 Com contr. *Ex urſino.*

27. Neither is there any courſe ſetled about divorce, which is to be done by the Magiſtrate, nor is it declared for what cauſe there may be a divorce, at the Common-Law there were many ridiculous cauſes of divorce, which were taken away by the Statute of 32. *H.* 8. formerly ſpoken of; (w) and divers unjuſt cauſes of divorce yet remains ſince that Statute. The power of divorce was then left in the Biſhops, and their Courts: (x) The baudy Biſhops allowed *cauſam frigiditatis*, to be a ſufficient cauſe of divorce, in the caſe of the Noble Earle of *Eſſex*, and declared his Marriage a nullity upon that ground. There ought to be ſome other ſettlement, that place ſeeming to give liberty for divorces, *Deut.* 24. 1, 2, 3. is not to be read poſitively, let him give her a Bill of divorce, but hypothetically. If he give her a Bill of divorce, that is cleared by our Lord Chriſt, *Math.* 5. 32. *Luke* 16. 18.

Li. Aſſiſſe. 19. pl. 2. 32. *H.* 8. cap. 38. 2 *Ed.* 6. 23. (w) *Cook. Comm. Littleton.* Li. 3. Sect. 380. p. 235. *Cook.* l. 6. fol. 66. and li. 5. fol. 98. b. (x) *Wilſon.* Hiſtor. *Britan.* pag. 68, 69.

Adultery by our Law doth not diſſolve Mariage, A vinculo Matrimonii, *but only* à Menſa & Thoro. *but theſe* de cauſa. 1. Præcontractus. 2. Metus. 3. Impotentiæ ſive frigiditatis. 4. Affinitatis ſeu conſanguinitatis, *are ſtill cauſes of divorce and diſſolve the very bond of Mariage.* Cook. Ut ſup. Junius. in Deutr. 24. 1, 3. Matth. 19. 9. Ameſius. l. 5. de conſcientia. cap. 38. fol. 371.

28. That there is no Law againſt lying, except it be for telling falſe news of Counſellours of State, and great men: Inſomuch that I have known when a fellow hath been the onely material witneſſe in a cauſe, and by his means the Suite hath been proſecuted, having affirmed, he would teſtifie thus, and thus, when the cauſe came to Tryal, this witneſſe ſwears the clean contrary, (y) and being asked at the Bar, if he did not ſay ſuch and ſuch words

(y) *The Law of the* Romans, *called* Talio, (*that ſuch a witneſſe ſhould pay what the Plaintiff by meanes of his falſhood, is adjuged to pay*) *might juſtly be inflicted upon ſuch a witneſſe, and the ſame is agreeable to the Law of God,* Exod. 21. 24. Lev. 24. 20. Bodin. *Republ.* l. 4. c. p. 470.

words, contrary to that he ſwears; he hath impudently anſwered, or the Counſel hath anſwered for him, that he did formerly but diſcourſe with the party to pleaſe him, becauſe he was earneſt with him, but now he is upon his Oath, he muſt, and doth ſpeak the truth: And yet no puniſhment was ever inflicted upon ſuch a knave for his lies, *Levit.* 19.16. *Prov.* 18.21. *Iam.* 3.8. Raiſing of lyes, and falſe rumours are prohibited by the Laws of *Geneva*, pag. 32, 37.

29. There wants a Law to ſuppreſſe the Rudiments of unlawfull (z) Magick, and (a) obſervation of Heatheniſh cuſtomes, and for ſurppreſſing of books of Magick, Conjuring, & Judicial Aſtrology, and many other Deviliſh Arts, and uſages, now very common in *England*, which prepare men for conſultation with the Devil, and bring them within the compaſſe of Wich-craft before they be aware, I could name many of theſe Tricks and Devices, and tell the Authors who diſcover them, ſome to good ends and ſome to bad ends, that I ſuppoſe they are too well known already, and it were well ſuch things were wholly concealed, and the books burned, as the ſame kinde were by the converts, *Acts* 19. 19. Although they were prized at 50000. pieces of ſilver, which is of our money, at leaſt eight hundred pounds; and ſurely they would never have been burned if they had been of any uſe, or might have been lawfully kept. It ſufficeth to know that they are againſt the Law of God, and invented by the Devil and his Agents, to drive a man from belief of *Moſes* and the Prophets, and to turn men from God: Now Aſtrology Judicial is in great credit, almoſt as much as it was amongſt the Heathen *Babylonians*, *Græcians*, and *Romans*, but in many things hath neither (b) foundation in nature, or reaſon, much leſſe in the Law of God, but theſe Aſtrologers judgements are meer conjectures, grounded upon the opinions and ſayings of Sorcerers, Conjurers, and other men like themſelves, the whole Judicial part of Aſtrology being condemned by the Learned as the (c) Root of many Deviliſh Arts, and hath been prohibited by ſome of the (d) Heathen *Roman* Emperours, and their books likewiſe burned, and

(z) *Perkins* 1. vol. com. p 43. Deut. 13. 1,3. and 18.10.11.

(a) Tit. Livius. l. 8. pag. 294. and lib. 39. p. 1033. C. *Wizards and fortune tellers ſeverall times baniſhed by the* Romans, *and their bookes burned, ſee the place laſt above mentioned.* Tac. Annal. l. 2. c. 8. p. 43. and Hiſt. Tac. lib. 1. c. 4. p. 16.

(b) *The Heathen* Romans *had then good dayes and diſmall dayes, as the Aſtrologers have, without any ground, or reaſon at all, two of the moſt famous dayes were the* 16. *and* 18. *of July.* Tit. Liv. l. 6. p. 217. *A. B.*

(c) K. *Ja.* Dæmonol. l. 1. c. 4. p. 13, 14. *Perkins* ut ſup. p. 44. Furius Scribonianus *was baniſhed for conſulting which wizards and Calculators of Nativities.* Tac. Annal. l. 12. cap. 11. pag. 171.

(d) Sueton. *Trang. in vita* Auguſti. Cæſaris. Sect. 31. *Idem in vita* Tiberii. Sect. 56. *& in vita Auli Vitelii* Sect. 14.

Aſtrologers: And theſe Aſtrologers are reckoned with the South-ſayers, and Conjurers in the holy Scripture, *Dan.*2.2. *Jer.*10.2. *Iſa.*8.19,20. 1 *Jam.*4.14. (*e*) The Aſtrologers attribute thoſe things to the Stars, which belongs to God alone. To Conjecture of mens fortunes, ends, vertues, vices, *&c.* by the Stars, is impious; and who ſeeth not but that theſe deceivers are ignorant of what ſhall befall themſelves every day, (*f*) all their Conjectures are uncertain.

(*e*) Wall. *on* 1 Corint.2.2. *Ex.* Pico. Mirand.

(*f*) Bodin. *Republ.* l.4. *cap.*2.p.441.

30. Perjury in an anſwer in Chancery, or Exchequer, is not puniſhable by any penal Law, or Act of Parliament, onely it's ſaid that it may be puniſhed upon a Bill for Perjury in the Court where it was committed, this is a long way further than a man will be willing to go at his own charge, and I never yet knew any man puniſhed there for any ſuch Perjury, and it was puniſhable in ſome caſes, in the Star-Chamber, however it's ſinfull perjury before God, *John* 8.44. *Zach.*5,4. *Ier.*5.2.

The ordinance for Reformation of the Court of chancery, appoints Legacies to be ſued for at Law; and excludes them the Chancery, but doth not direct in what account ſhall be brought.

31. There was no Law to recover Legacies, but in a Court of Equity (before the laſt Ordinance) and there is yet no Law ſetled for recovery thereof, if the Legacy exceed not twenty pounds, the charge of the Suit in Equity, if it come to a Decree, will be as much as the Legacy, it may be much more, if the Defendant be wilfull, or liberal, nor is there any Law to acquit executors upon payment of Legacies to Infants, although it be done to their great preſerment, this is a defect, *Rom.*13.7. *Heb.*9.17.

5 *Eliz.*c.15.

(*g*) *The defect of this Law was complained of by* Sr. George Crooke, *upon the triall of a witch convicted of witchcraft, but not of Murder, about the year* 1627. *at Coventry.*

32. There wants a Law for puniſhment of Witch-craft, where murder is not committed, ſetting a Witch upon the Pillory, and impriſonment for exerciſing her Deviliſh malice upon Cattle, (*g*) or men, when death follows not, is not ſufficient, ſuch Witches as likewiſe Magicians ought to be put to death, *Exod.* 22. 18. K. *Iam. Damonol. lib.*3. *cap.*6. *pag.*76. An Action upon the Caſe will not lye for calling one Witch, and this reaſon is given in the book, becauſe Witch-craft is but Art, and the word doth not imply any Act, or exerciſe of it. But Gods word teacheth us not to conſult with the Devil, or his evil inſtruments; (*b*) The *Romans* baniſhed ſuch as conſulted with Wizards, and ſometimes put the Magicians and Wizards to death, according to Gods law. Thou ſhalt not ſuffer a witch to live.

(*b*) Tacit. Annal. l.2. cap.8. p.43.

Pitnanius a Magician was caſt down headlong from the Tarpeian *Rock.*

33. There

33. There wants a Law directing, how means personal Estates shall be divided by Administrators, when a man dieth in Estate; (i) It was anciently at the discretion of the ordinary, who used to dispose of part of mens Estates, or what he pleased, *in pias causas*, or for the health of the Soul of the deceased (as it was said) but now the Superstition is removed, it's necessary it should be declared what proportion the Wife and Children, or Kindred should have, it seems anciently a Wife was to have a third part of her Husbands clear personal Estate, and Children unpreferred another third part, *Cook*, English Law, *pag.* 47. but this is not observed.

(i) *Magna-charta. c.18. Fitz. N. B. 122. l. Swingat Law cap.11. p. 19. numb.13.*

34. The like want is found, where a man seized in Fee-simple of Lands, having no personal Estate, and many Children, dyeth in Estate, the Land descends to his Heir, and the younger Children can claim nothing, this is a hard case. And far worse is it, where a man hath an Estate in Tail, and nothing else to preferre younger Children: In the first case he may by Will in writing charge his Lands, in this he cannot dispose of his Lands by Will, charge them with any thing to raise portions for younger Children, this would be amended by some profitable Law, and Lands for this cause would be made Fee-simple, *Gen.*25.6. *Luke* 15. 12. *Iosh.* cap.14. and 15.16,17.

All men who have any estate ought to make wills to preserve peace after their deaths, and to divide their estates amongest their Children. Gouge. on Epes. 6. Tract. 6 pag.321.

35. There wants a Law to secure purchasers from being cheated by old Intails, sleeping Morgages, Judgements, & Statutes; In-so-much, as I heard a Learned man say once, there is no fence against a Knave, some publick Register in every County should be setled, and a Law made that whatsoever Estate should not be there entred, should be void, as against purchasers, and such as some in for valuable considerations, there are many men cozened, and undone in such cases, and no remedy, if the Incumbrances were for any valuable consideration at the first, although of long continuance. This ought to be amended, see this case recited by *Charles, Geo. Cook. Essay*, pag.123.

The remedie of this is to have all mens estates inrolled in the Counties where they are; As the Jews had their estate with their Pedegrees inrolled, Ezra.2. 61. Jer.32.11. John. 14. and 15. and 16.

36. That Copy-houlders of Inheritance should not have liberty to set, or let their Lands, (k) unless for a year, or three years is a hard Custome, and to Fine at the Will of the Lord is worse, the pretence of Ease in Chancery, or Exchequer is a meer gullery, the first ought to be amended, and the last assertained by some good Law, *Cook* English Law, pag.48, 49.

(k) Bodin. *de Republica.* Tit. 1 p.39. Cook. *compleat Copiehoulder.* sect.9. p.8. sect.12. pag.14,15.

37. That there ſhould be no means to recover Debts upon (l) ſimple contracts againſt Executors, nor to recover from the Executor of him that was Bayliffe, or receiver of monies, as it falls out in ſome caſes, is a great defect, the reaſon of it is, becauſe the Teſtator might in his life-time have waged his Law. But in ſome caſes it is impoſſible, that he ſhould in reaſon by ſuch gager diſcharge himſelf, as when the money is an Infants, and when there are witneſſes to prove the contract: This ought to be amended, being but a Law of common right to enforce a mans Eſtate to pay Debts, which are juſtly due, 2 *Kings* 4.7. *Exod.*22.26,27. *Luke* 6.35. and 7.42.

(l) *It's made a note of a wicked man to borrow and not to repay,* Pſal.37.21. *Therefore there ſhould be a Law to enforce men to pay juſt debts, and not to ſuffer men to cheat men by ſuch nicetie.* Gouge. *on* Epheſ.6. Tract.5.pag. 271. col. a. b.

38. There wants a Law for reſtraint of exceſſe, and over-ſumptuouſneſſe in diet, and houſe-furniture, the exceſſe wherein doth ordinarily undoe, and cauſe to goe to ruine, the Eſtates of very many, eſpecially (m) Citizens, and is the worſt Thief in the Common-wealth, (except gaming and ſuretyſhip) the *Romans* had Laws for reſtraint in this kinde, and therein (n) *Auguſtus Cæſar* was a notable pattern, of whom it's reported that he uſed to make his ſupper of three diſhes of meat, and when he would fare moſt highly (with invited Gueſts) he had but ſix diſhes at the moſt, but as he entertained his friends in no exceeding ſumptuous manner, ſo he welcomed them with all the kindneſſe and courteſie that might be: This example may ſhame many profeſſing themſelves Chriſtians, who digge their graves with their teeths, and bury their Lands in their bellies, by their katering for the fleſh, to fulfill the luſts thereof, contrary to the Apoſtles rule. And for over-coſtlineſſe in houſe-furniture, that likewiſe was reſtrained by ſeveral Laws of the *Roman* Emperours, who would not admit the people to have ſilver plate, and coſtly furniture, either of Bedding, or other Houſhold ſtuffe, neither did the Emperours exceed themſelves, but ſome of them ſeemed to be too frugal, and their lodgings too mean for ſuch Princes and Emperours. It were well there were a Law appointing a moderation in theſe things, & for puniſhment of the exceſſe. (o) It was that wicked fool *Nabal*, of whom it's ſaid that he made a feaſt like a King, and that he was very drunken, and it's charged upon (p) *Belſhazzar*, that to furniſh his drunken feaſt, he muſt needs have the veſſels

(m) Cœl. Rhodig. Lect. Antiq. lib.9. c.13. p.330.

(n) *In villaticis paſtionibus ſunt, qui pro guloſo accipiunt.* Ægyptio Regi *diſcumbenti inferebatur, vil præter vitulum & Anſerem: bibendi ad præſcriptum lege juncta.*

(o) Sueton. *in vita* Auguſti. Cæſar. ſect.34. *Idem in vita* Julii Cæſaris. ſect. 43.

(p) *Vita* Tiberii Sect.34. Tacit. Annal. lib.2. cap.8. pag.43. and lib.3. cap.11. p.80. and cap.12. pag.81. (q) 1 Sam.25.36,37. (r) Dan.5.1,2,3.

ſels of ſilver and gold, which were taken out of the houſe of God, but both he and *Nabal* ſuddenly ended their feaſting and jollity, and died, for ought appears, without repentance, *Heliogabalus*, that gluttonous Emperour was ſlain by the Souldiers, and his body dragged through the Citie of *Rome*, and caſt into the River *Tyber*. By the Laws of *Geneva* no man may have above twelve Diſhes of meat at any feaſt, beſides fruits. Laws of *Geneva*, pag. 34.

Euſeb. l. 1. c. 21. Simpſon *church.* Hiſto. pag 31.

39. There is no Law but what is * obſolete and diſuſed concerning apparel, otherwiſe States have had ſumptuary Laws of this kinde, which were ſtrictly obſerved: I do not herein approve or comprehend thoſe Superſtitious ſignificant Garments uſed by the Popiſh Clergy, and heretofore uſed in *England*, becauſe we are now eaſed † of that Superſtition: But I ſpeak of the civil uſe of Apparel, which ought to ſerve as well to diſtinguiſh men in their ranges and degrees, as to difference the Sexes. The (*q*) meaner ſort of the Jews went in black, or obſcure Garments, the (*r*) Princes Children wore white, or purely coloured, (*ſ*) the Queen wore imbroidered, or wrought Garments, (*t*) thoſe in great houſes wore ſilkes, or ſoft raiment, and alſo purple and ſcarlet, and ſo did the Judges and their families, *Prov.* 31. 21. and 23. It was a laudable cuſtom amongſt our fore-fathers that ſervants were known by their Habits, Liveries, and Badges, even from the Kings to the ordinary Gentlemans; they uſually wore Coats, ſuch colour as their Lords, or Maſters bore, Gules, Azure, Sable, or the like, with their Maſters Coat, Armour, or Creſt, or what Liveries their Maſters pleaſed to give them: This was a notable diſtinction; and let not him that is a ſervant be aſhamed of his Livery and imployment, ſeeing he lives by it. The ſix Clarks in Chancery attended the Maſter of the Rolles, in a known habit. The Judges ſervants did wear ſuch habits, I have ſeen Sir *Edward Cooks* followers in the Circuit in blew Coats, and I could name a Knight who attended an Earl in the ſame habit. The order, or rather diſorder now uſed, the ſervant is not known and ſometimes miſtaken for the Maſter, and that *Jone* is as good as my Lady is a thing intolerable, and ought tobe reſtrained, as likewiſe the wearing of ſo much ſilver and gold by the ordinary ſort of people, and no Law againſt it, therefore I account it a defect that there is no Law ordering matter of Attire and Apparel.

* 24 *H.* 8. cap. 13. *Raſtel Entr. Tit. Apparel.*

† *Laws Geneva.* pag. 31.

(*q*) Pſal. 26. 4.
(*r*) Gen 37. 32.
2 Sam. 13. 18.
(*ſ*) Pſa. 45. 13.
(*t*) Luke 7. 25.

Perkins. vol. 1. p. 60. col. 1.

Cooke Eſſai. pag. 176.

(*u*) The

(u) Bodin. Republ. l. 6. cap. p. 770. *we may ſee there, what apparel was prohibited to the* French *Nation.*

(u) The *French* had a Law made in the reign of *Charles* the ninth, concerning Apparel, to which there was annexed a Fine of a thouſand Crowns, impoſed upon every one who ſhould much, or leſſe tranſgreſſe the ſame, which Law is ſuppoſed to be too ſevere: but yet it ſhews what care other States and people have had to bridle this exorbitance, and exceſſe in Apparel, and there are ſeveral Acts of Parliament in *England* touching this matter, but they are all out of uſe and ſerve for nothing.

The Romans *had the* like Laws. Tacit. Annal. l. 2. c. 8. p. 43.

39. It would be of great uſe if there were a bank of money in every County, conſiſting of ſuch mens money as are known to be well furniſhed, to be lent out at ſuch rate as the Law ſhall permit to ſuch as could imploy it profitably. And when the Coffers of the Common-wealth are well ſtored, it might be convenient to be ſo imployed. By this means all perſons who are fit to be truſted might be furniſhed; and that curſed trade of brokage and cheating amongſt Scriveners caſhiered. This courſe hath been uſed anciently, and is uſed at this day in many Common-wealths. The Chamber of *London* was formerly of excellent uſe, but now it's reported by ſome of their own Members, that ſince they parted with the laſt money to the late King (I take it, that it was 80000. *l.*) they were never able to pay their debts, unleſſe they ſhould pay them out of their own Eſtates. (x) The *Romans* had ſuch a courſe amongſt them, which was a great eaſe to the people.

(x) Tit. Livi. pag. 263. *E. F.*

Thoſe who had the Charge of this bank were called. Menſarii. Tiberius *in time of want of money, lent forth great ſumes out of the Publique Bank freely.* Tacit. Annal. l. 6. c. 4. p. 127.

40. There wants a Law (as I conceive) for more effectual diſpatch of payment of publick debts, then yet is provided. The debts upon publick faith eſpecially, although the promiſed intereſt were abated, or moderated, it would much repair the credit of the Common-wealth, which is much broken by none-payment, and would be an ineſtimable prejudice, if ever there ſhould be occaſion to borrow again: (y) The ſtate of *Rome* under the Counſels was once in a worſe condition than *Engl*[illegible], they had contracted a huge debt upon Loan to defray the charge of the Punick war. But before that was payed the *Macedonian* war grew on, whereupon the people began to account their debts deſperate, ſaying that their moneys which they lent upon courteſie and benevolence, was like to fall to the common Cheſt of the Citie, ſeeing that one war followed upon the neck of another. To ſatisfie theſe debts (which was but the third part of the whole) and the

(y) Tit. Liv. l. 29. p. 720. M. and pag. 721. A.

laſt

laſt payment: (z) All the *C*ommon Lands within 50 miles of *Rome* round about, were conveyed to the *C*itizens in Fee-farm, reſerving three farthings by the year upon an Acre, to teſtifie that they were the *C*ities Lands, and to be redeemed when the State ſhould have money. This Land was called *Trientius* and *Tributus*, becauſe it was granted in lieu of the third part of the Loan money. And as another means to enable the *Romans* to diſcharge great debts, they * uſed in time of neceſſity to bring intereſt of money to one in the hundred, and ſometimes to half one in the hundred, I ſuppoſe this were enough for money lent upon the publick faith, if it were well conſidered, ſeeing almoſt every *C*reditor hath received more benefit than the intereſt of money, having his ſhare in the bleſſing of Peace with the freedom of the Goſpel, and his Eſtate ſecured and quiet. It is to be wiſhed that after our late wars before the publick debts be payed, we do not haſtily run into other wars, without juſt inforcement, leſt we bring our ſelves into the *Romans* conditions, being far leſſe able to raiſe money, or to give ſatisfaction than they were.

(z) Tit. Liv. l. 31. p. 781. *A. B.*

* *Idem*, Tit. Liv. lib. 7. p. 267. *D.* Tacit. Annal. lib. 6. cap. 4. p. 126, 127.

Chap. XV.

A digreſſive diſcourſe about the preaching of the Goſpel, the ordination and appointment of Paſtors and Teachers, and of their Office and maintenance.

IT ſhall in this diſcourſe (as my private opinion) be premiſed (wherein I crave pardon if I differ from other men) that the (a) great diſtinction of the Tribe of *Levi* from the reſt of the people, with all their Sacrifices, Circumciſions, Services at the Altar, their portion of the Tythes and Fruits, their reſtraint from having any Lot of Land amongſt their brethren in the Land of *Canaan*, (except that which was allotted and ſet out to them) their purifications, ſignificant Garments,

(a) *The diſtinction of Clergie and Laitie grounded upon* Magna Charta, *and other popiſh Laws, is ſtill ſtiſly maintained, and upon that ground the Miniſters claim to be diſcharged of Conſtables, Leavies and other ſecular ſervices, (as they are call'd) And the Lawyers are very earneſt to uphold this ſuperſtition. Although all Gods people being alike his* Lotor *Clergie, are called a Kingdom of Prieſts*, 1 Pet. 2. 9. Iſa. 61. 6. Revel. 5. 10. Deut. 32. 9. ech. 2. 12.

with all other their Levitical and Ceremonial ſervice, are all finiſhed by the death of Chriſt, who faſtened all thoſe to his Croſſe, and took away this diſtinction, and the burden of theſe Ordinances: And that they were dead and not binding after Chriſts death; That they had an honourable burial, and were perfectly aboliſhed, at the demoliſhing, and plucking down of the Temple, the place of the reſidence thereof, fourty two years after Chriſts death. And that as at the firſt theſe things were neceſſary, being the Commandments of God, & attending his ſervice & worſhip, ſo after Chriſt they were dead, and at the moſt, things indifferent, and rather ſuffered for the weakneſſe of the Gentiles, and in compliance with the Jews, to the furtherance of the Goſpel, than for any neceſſary uſe thereof; nay, and in caſe of ſcandall, and where they were much ſtood upon as matters appertaining to religion, they became unlawfull, and to be eſteemed as beggarly rudiments, Circumciſion it ſelf, being a rejecting of Chriſt: But after the diſtruction of the Temple, when that Levitical and Ceremonial vvorſhip, with all the appurtenances were deſtroyed, dead, and buried, the uſe thereof became utterly abominable: And therefore it is an unlawfull accurſed thing to raiſe them out of their Graves again, and to uſe the ſame in derogation and oppoſition of Chriſt, and the ſufficiency of his ſufferings, and upon this ground I conceive it unlawfull for the Miniſters of the Goſpel to Judaize in point of claiming by Divine right, or receiving of Tythes, as much (in reſpect of the lawfulneſſe, or unlawfulneſſe of the thing) as if they ſhould again fall to circumciſing and to ſacrificing, as the Papiſts pretend to do in their idol of the Maſſe. And it may be judged that the Miniſters are blinded with the profits of the Tythes, more than they were with their ſignificant Garments and ceremonies, becauſe they receive more worldly advantage by them than by the reſt, which being unprofitable they have more willingly parted withall: And eſpecially their Pariſhes which the Church of *Rome* received from the Heathen (the City of *Rome* it ſelf being, before the Suburbs were built, or the Citie ſacked by the Goaths and Vandals) divided into two and thirty Pariſhes, and ſo came into the hands of the Pope, who ſucceeded the *Pontifex Maximus* of the Heathen, with payment of Tythes, like thoſe of the Jews, as before is herein ſet forth; and thence came all this traſh into *England* with the

the Hierarchy of Biſhops and Arch-Biſhops, in the room of the *Flamins* and *Arch-Flamins* of the Heathen, and to the ſhame of Chriſtianity and ſcorn of the Goſpel, are not yet all caſt out as unclean things. O *England*, wilt thou not be made clean! when will it once be?

This being premiſed I preſume to enquire what Miniſtry there ought to be, in the times of the Goſpel, what is the nature of their function, and who hath the appointment thereof, and how the Miniſters ſhall be maintained, and ſo the publick vvorſhip of God upheld. And herein I ſuppoſe we ought neither to imitate the Jews, in what they did by vertue, or authority of the Levitical, or Ceremonial Law, nor the idolatrous Heathen, who borrowed many of the Jews Rights and Cuſtomes, nor yet the idolatrous and Superſtitious Papiſts, who retained both the Ceremonies of the Jews and Pagans. But that in, and concerning the things before mentioned, we look for a pattern, or vvarrant from the holy word of God, ſufficient to inſtruct us in this point, and which may be a ſtanding rule not to be changed, or altered, as the Levitical and Ceremonial Laws were. And herein I affirm that a (a) great part of the work lies upon the hands of the (b) Civil Supream Magiſtrate, who in this reſpect as well as others is, (c) διάκονος θεοῦ, the Miniſter of God, and ought by good Laws to appoint the Miniſters their imployment, and ſee that they do their work, for proof hereof I will not much inſiſt upon the practice of (d) *Solomon* in building the Temple, nor upon *Solomon*, (e) *Jehoſaphat*, and (f) *Hezechiah* their facts in appointing the *Levites* their Offices and courſes, leſt that ſhould ſeem to comply over-much with the Levitical ſervice, although ſomething, by way of Analogy, may be proved from thence, and much more might be ſaid of *Solomon* his putting the High-Prieſt from his Office, and appointing another in his room, 1 *King.* 2. 27. 35. and of *Aſa* (g) and converted (h) *Manaſſes*, their commanding *Iuda* to ſerve the Lord. But the fact of *Iehoſaphat*, 2 *Chr.* 17. 7,8,9. ſeems to me a good Teſtimony in this matter, and undeniable. It's ſaid that he (that is, *Iehoſaphat*) (i) in the thirteenth year

Before Churches were gathered and ſetled, Kings and Emperours had the ordering of the affaires of the Church as well as the Commonwealth, and had the nomination of Biſhops, untill the Pope uſurped that power.

Hawk. *right of* Dom. l. 3. c. 5. pag. 136, 138. 140.

(a) *About* Ann. 320. Conſtantine *the Great, the firſt Chriſtian Emperour ſent forth preachers of the Goſpel,* Sympſon. *Hiſt. of the Church*, lib. 1. pag. 6. *ex* Sozom. l. 2. cap. 6.

(b) *The* Pontifex maximus *or chiefe Preiſt amongſt the* Romans *was choſen by the Emperour.* Tac. 1. Annal. l. 1. cap. 1. pag. 2. (c) Rom. 13. 4. (d) 2 Chro. 8. 14. (e) 2 Chro. 20. 21. (f) 2 Chro. 31. 2. 1 Kings 2. 27, 35. (g) 2 Chro. 14. 4. (h) 2 Chro. 33. 16. 2 Chro. 17. 7, 8, 9. (i) *It's ſaid that* Nehemiah *appointed the Prophets to preach at* Jeruſalem. Nehem. 6. 7.

year of his reign, ſent to his Princes, *Benhail*, *Obadiah*, &c. to teach in the *Cities* of *Iuda*, and with them he ſent *Levites*, *Shemaiah*, *Nathaniah*, &c. and with them *Eliſhama*, and *Jehoram* Prieſts: And they taught in the *Cities* of *Juda*, and had the Law of God with them, and went about throughout all the *Cities* of *Juda*, and taught the people. Five things I conclude from this context. 1. That theſe Princes, Prieſts, and Levites, were appointed to the work of teaching by the King. 2. That the Princes as well as the Prieſts & Levites taught the people. 3. (*k*) That the Kings command was the ground of their Commiſſion to teach the people. 4. That ſome Teachers are not tied to particular Congregations. 5. That this teaching was no Ceremonial or Levitical ſervice, nor performed in the Temple, this preaching was in the City of *Juda* out of *Jeruſalem*, & they had the book of the Law of God with them, & out of this they taught the people: This book of the Law was that, which the King was commanded to read, and contained the moral as well as the judicial, and ceremonial Law, which being read to *Joſiah*, melted his heart; and that which with the Prophets, (as commentaries thereupon,) was read in the Synagogues of the Jews every Sabbath-day: (*l*) If we ſhould conſult the Papiſts and rigid Presbyters in this matter: The Papiſts tell us that all authority to teach, or preach (for it's all one) is to be derived from the head of the Church on earth, that is the Pope, and that the Biſhop, as the Popes Subſtitute with a Presbyter, are to ordain the teaching Prieſts, and ſo they did in *England* in the Biſhops time. The rigid Presbyters of this age tell us that the Presbytery are to ordain thoſe, who are to teach, or preach, and ſuch as teach, or preach without their ordination, which is done by the impoſition of hands of other Presbyters, or Preachers, do greatly ſin againſt God, but I think it will not be denied, that whoſoever may offer up publick prayer, may alſo publickly teach or expound the holy Scriptures, King *Solomon* did the one, 1 *Kings* 8. And I ſee no reaſon, but that he, or any other in his condition may do th'other, if he be apt to teach, and able to divide the word of truth aright, we cannot in the New Teſtament expect the civil Magiſtrates to put forth, or execute ſuch a power as *Jehoſaphat* did, for that was contrary to their principles, to further the preaching of the Goſpel, or the religion of Chriſtians, which thoſe Pagan Emperours, and Kings accounted (*m*) a barbarous

(k) *Laws of Geneva*, p. 2, 3. 1. *The Miniſters are firſt approved of by the Council.* 2. *Then received by common conſent into the Company of the faithfull.* 3. *Then ſworn before the Signiorie to ſerve God faithfully in the worke of the Miniſtery. This is called the Miniſters Induction.* pag. 3.

(l) Acts 15. 21. Acts 13. 15.

(m) Acts 25. 19. Sueton. *in vita Claudii Cæſaris.* Sect. 16. Broughton in Daniel. *Concluſ. in fine.*

barous Superſtition; therefore the Lord of the Harveſt ſent forth labourers into his Harveſt, the Apoſtles and Evangeliſts, with larger Commiſſion than to teach in the Cities of *Juda*. Firſt to the loſt ſheep of the houſe of *Iſrael*, and the Apoſtle *Paul* was immediately ſent to the Gentiles, and then the Commiſſion was to preach the Goſpel to every Creature. Theſe were not tyed to any particular Congregation.

But beſides theſe, there were Paſtors and Teachers ſent, and raiſed up for edifying, and building up the Church of God, and untill Churches, or particular Congregations were ſetled, the preaching was at large, but when the number of believers was increaſed and multiplied, then were they divided into particular Congregations, and had their Paſtors, and Officers by (*n*) ſuffrage, or (*o*) Election, and thoſe Congregations of believers, called alſo the Church, as occaſion was (*p*) ſent forth others to preach the Goſpel, to ſuch places where there was need, and where the Goſpel was like to be received, to gather men to Chriſt, and this was done in defect of the work of the Supream Magiſtrate, (*q*) (whoſe Office it is to appoint the Goſpel to be preached to the world) and the Lord did from time to time in every age, as might eaſily be ſhewed, when there wanted a Chriſtian Mageſtrate, and alſo during the Tyranny of Antichriſt, ſtir up men, whom we may well ſay were ſent of God to preach the Goſpel, although they were not ordained by any Presbytery, unleſſe it were by the Presbytery, or prieſt-hood of the Church of *Rome*, which upon their converſion they utterly renounced; and I doubt not to ſay, but that thoſe who are apt to teach, and able to divide the word of truth aright, and are willing for conſcience ſake, and the glorie of *God*, in the converſion of Souls to ſpend themſelves in teaching the word of *God* to the world, may have a ſufficient

Regenvolſc. Hiſt. Eccleſ. Slavoni. Provin. l. 1. cap. 3. pag. 12. Petrus Valdus *a rich Merchant of Lions, was choſen Paſtor of the Church their, Anno* 1160. Act. 1. 23. and 5, 6. Calvin. Inſtit. lib. 4. cap. 19. Sect. 31. and c. 14. Sect. 31. *Fuller Holy ſtate* l. 2. c. 12. pag. 87. Magd. Centr. 2. c. 7. Cent. cap. 7.

(*n*) Acts 9. 30. Acts 11. 22, 26. and 13. 3. 15. 2, 3.

(*o*) Simpſon *Church* Hiſt.

lib. 2. Cent. 12. pag. 429, 430. (p) *The manner of the Election of Paſtors in the Slavonian Churches, Anno* 1467. *You may ſee at large, in* Regenvolſcii Hiſtoria. Eccl. Slavon. Provin. lib. 1. c. 1. p. 30, 31, 32. (*q*) Conſtantine *the Great and* Theodoſius, *before the reign of Antichriſt, and afterwards*, Otho *and* Henry *the fifth Emperours, and others nominated and appointed Biſhops, and others to preach*, Simpſon *Church* Hiſt. lib. 1. pag. 6. Whites *way to the true Church.* Sect. 50. p. 389, 390. Petrus Valdus, *and the Bretheren of that ſocietie, who were raiſed up about the year*, 1160. *in that and the next century, and afterwards* John Wickliffe, *his followers (by their publique preaching) gathered more Churches, and converted more ſouls to Chriſt than all the Biſhops and Presbyters had done in* 600. *years before. Many of which Churches remain to this day.*

call and Warrant thereunto from *God*, without the laying on of the hands of any Presbytery, which ceremony I take to have been annexed to miraculous and extraordinary gifts of the Holy *Ghost* bestowed on men, in the first setting out of the *Gospel*, and not to be used where such extraordinary gifts of tongues, Prophesie, and miracles, are ceased no more than that ceremony of anointing the sick with Oyl, being also used in those dayes, and accompanying the gift of healing, they are now used with us, (r) as they have been, and are used in the Church of *Rome*; the one called the Sacrament of Orders, and th'other of extream Unction, and both these ceremonies of imposition of hands, and anointing, were used likewise by the Papists in their Sacrament of confirmation, and I doubt not but all of them are promoted by the Jesuits, and Romish Priests at this day amongst us. It cannot be shewed that either *Petrus Valdus*, or his followers, called *Waldenses* and *Albigenses*, of whom there (f) were fourty Churches, Anno 1254. received these ceremonies, where it also appears that the brethren (for so the Church Members were called) did send out many of the Members to preach the *Gospel* in other places, in *Greece* and *Thracia*, &c. and they were incouraged by the Kings Letters Patents, *pag.*35.36.

(r) *Calvin.* Institut. l.4. cap.19. pag. 722, 724.
(f) *Regenvolfe.* Hist. Eccl. *Slavon.* l. 1. cap 3. p. 12. 30, 31, 32. Sympson *Church.* Hist. lib. 2. cent. 12. p. 429, 430. pag. 321. Whites *way true Church.* sect. 44. numb. 1. *Ex* Ramerio in Biblioth. Patr. Tom. 4. Par. 2.

Now for the maintenance of the Ministers of the *Gospel*, according to their several functions, or rather difference of imployments, generally, they are to have (t) liberal maintenance, according to that of the Apostle, *God* hath ordained that he that preacheth the *Gospel* should live of the *Gospel*.

1 Corint. 9. 7, 9. 11, 12. 14. Gall. 6. 6. Luke 10. 7.

The first sort, that is, those that preach to the world, are to be maintained by the world, and because the wicked world having weak eyes, think nothing a greater torment than the light, the Civil Magistrate is to see to the maintenance of these Ministers, and may lawfully raise it upon the world, although against their wills, as the Magistrate doth provide for such mad men and Idiots, as cannot guide their own Estates, and dispose thereof for their necessary use and benefit: (a) And for th'other sort of Ministers they ought to be provided for by the Churches, according to their abilities, and none of these to be maintained by Tythes, for the reasons herein before alledged: Now although I affirm that the work to appoint Pastors and Teachers, lieth chiefly in the power of the temporal Magistrates, yet I conceive

(a) Tim. 5. 17, 18. Matth. 10. 9, 10.

it

it neceſſary that godly learned men be conſulted with, who may ſatisfie the Magiſtrate, touching the learning, and ability of ſuch who are to preach the *Goſpel*, as is uſed in ſome reformed Churches, where Tythes are aboliſhed.

But that which will be ſaid againſt this kinde of maintenance of Miniſters, not by Tythes, is that which is uſually objected, *viz.* That no way can be found out ſo certain, equal, and indifferent, for maintenance of the Miniſtry, as by Tythes, which are ſetled by ſo many Laws. For anſwer hereunto, I will not at large handle that controverſie, which requires a volume larger than what this Treatiſe can permit (having writ ſomething elſewhere, touching the ſame.) I ſhall onely propound a clear remedy, for cure of the many janglings, and wranglings, which are daily between the Miniſters and people, about payment of Tythes, which both hinder the ſtudy of the one, and diſcourage the labour of the other, and continually diſquiet them both, hindring the preaching of the word of *God*, and obſtructing the good effect thereof. The remedy I humbly propound is this: Let there be a ſurvey of all ſpiritual promotions (as they are called) ſuch as that in *Edw.*2. his time, and then let all gleab Lands, Tythes, Oblations, Obventions, and other profits claimed, and by Law belonging to the Parſonages, Donatives & Vicars be ſold, to the owners of the Land and eſtates, out of which they ariſe, (or to others if they refuſe to buy the ſame) at ſixteen years, and two thirds of one years purchaſe, and that will raiſe juſt ſo much money, being diſpoſed of at ſix in the hundred, as is now due, or payable to the Perſons and Vicars. For example, that Parſonage which is found to be threeſcore pound by the year, *Communibus annis*, ſhall at this rate be ſold for 1000. *l.* which yields threeſcore pounds by the year, and if this rate be a little too dear for the tythes, the Gleab-lands will make amends, which for the moſt part are the beſt Lands, in every Town, and without doubt the Owners of the Lands charged with Tythes were better to give twenty years purchaſe for the Tythes, than to pay them conſtantly, being an exceeding curb and oppreſſion, both to the Tenant and Owner of the Land, and this is the remedie I propound: And if the ſame were done, then might the money raiſed thereby be allowed to ſuch as are able, faithfull, and willing to preach the Goſpell, and then ſuch as are ignorant, inſufficient, ſcan-

Proviſion for Miniſters of the Goſpel without Payment of Tythes.

ſcandalous, and prophane, may be kept out of this ſervice, for that, although the (x) Devil, and wicked men may preach Chriſt in ſome ſort (y) (as ſome ſay *Judas* did) yet it doth not appear, not is to be believed, (there being no word of faith to warrant it) that ever any man, not walking in the wayes of God, or not being converted, ever (z) turned any one from his unrightouſneſſe, that being one of the moſt glorious workes of *God*, which he doth not uſe to act by wicked men, which appears clearly by many Teſtimonies of holy Scripture. (*) It is a point commonly inſiſted upon that *God* doth no great work by any man, but he firſt humbleth him. And this is all I ſhall ſay, touching this matter, being ſo long a digreſſion, onely as appertaining to the matter in hand, I ſet it down as a defect in our Law, that there is no competent, or ſufficient meanes of maintenance ſetled for a *Goſpel* Miniſtry, but onely that which was ordained, and continued byt, hat Antichriſt of *Rome*, and his Vaſſals, and ought not to be upheld, or made uſe of by the people of *God*, but with the Leviticall and Ceremoniall worſhip and the Temple to be aboliſhed.

(x) Luke 4. 34.
(y) Math. 10. 4, 5, 7.
(z) Jerem. 23, 21, 22. Luke 22. 32. Daniel. 12. 3. Mal. 2. 6, 7, 8.
(*) *Dr. Brian.* in Mal. 3. *Dr. Grew.* in Epheſ. 2. 1, 2. Acts 9. 4, 5, 6. 15, 16.

Chap. XVI.

A Corollarie, or Concluſion.

IN this diſcourſe is clearly evinced the manifold impieties, ſuperſtitions, prophaneſſe, oppreſſions, falſhoods, uncertainties, ambiguities, prolixities, and other enormities, as well in the Theory as in the Practick-part of the Laws of *England*; as they are now in uſe and practice, ſome few of which evills were ſufficient cauſe to decry, and aboliſh any humane Law under heaven; Inſomuch that the civilized Heathens and Pagans, in many things appertaining to diſtributive Juſtice, both in their Laws, and in the practice, and execution thereof, have ſhewed more impartiality, reaſon and judgment, than many of our Laws can admit, and therefore, it's to be hoped that the great Patrons thereof will bee ſilent, whilſt other men ſeek to *God*, and ſupplicate, the ſupream Magiſtrate, and Legiſlative power of the Land, for a more

a more perfect pattern and foundation, whereupon may be built a more glorious ſtructure.

Know the world will ſay, that this Law is a ſacred ſpark ſome excellent guift from above (as (*) all the Heathen generally held their Laws to be) the very Records having gained the name *ſcrinia ſacra*, and the profeſſors and practicers of it having found it as profitable, as *Diana* was to *Demetrius*, and the reſt of his craft, and therefore that it needs no alteration; and it may be others will ſay, its an eaſie matter to finde fault with the Law, but its not ſo eaſie to amend it: to all theſe I ſhall ſay this, which I formerly hinted; That the written word of *God* contained in the Old and New Teſtaments, manifeſting the minde of *God*, by (*a*) commands, (*b*) prohibitions, (*c*) exhortations, (*d*) dehortations, (*e*) promiſes, (*f*) threatnings, (*g*) judgements, (*h*) afflictions, (*i*) objurgations, (*k*) expoſtulations, (*) ſarcaſmes, and (*l*) bitter taunts, Ironical, (†) affirmations and negations, (*m*) reproofs, (*n*) invitations, (*o*) incouragements, (*p*) ſignall deliverances, (*q*) eſpecial favours, (*r*) and leading providences, commended to us in holy Scripture to teach us, and ſundry (*ſ*) Tropical and (*t*) figurative expreſſions of his will to our capacities, with neceſſary (*u*) conſequences from the word, are ſufficient to overrule all caſes, inſtruct all Magiſtrates and Judges, and to teach all duties towards *God* and man, and that there need no other Laws, but what are founded upon this ground, and built upon the ſame foundation.

And by theſe were the *Iſraelites* happily governed without any other policy: And this is all the Directory which the Lord by the Prophet *Malachi*, left to his people, to be their guide, in that 400 years, from his time untill *John Baptiſt*, wherein there were to be no more Prophets. Remember the Law of *Moſes* my ſervant, which I commanded unto him in *Horeb*, for all *Iſrael*, with the ſtatutes and judgements, *Mal.*4.4. And where its commonly ſaid that many ſins are invented, and faults found out ſince the Scriptures were written, which cannot be obviated, or comprehended in Scripture Laws. It may be anſwered, that there can be no offence, new or old, but its (*x*) condemned in the word of God, for example there are many Superſtitions, new Oaths, and

* *Grotius.Pol. Max. part.2. c.8. p.68,69. & Corol. in fine. Bodin. Repubſ. lib.1. p.58. Tit.Liv. lib 3. p.11c. H.*

(*a*) Exod. 20. 8, 12.
(*b*) Exod. 20. 4, 13.
(*c*) Deut. 6. 3, 4, 5.
(*d*) Rom. 12. 2, 19.
(*e*) Pſa. 41. 1, 2.
(*f*) Rev. 22. 18, 19.
(*g*) Jude 6. 7, 11.
(*h*) Mich. 6. 9, 13
(*i*) Acts 13. 10, 11.
(*k*) Jerem. 13. 23, 27.
(*l*) Amos 4. 4, 5.
(*m*) Math. 23. 15, 16.
(*n*) Math. 11. 28, 29.
(*o*) Hebr. 13. 5, 6.
(*p*) Acts 12. 7, 11.
(*q*) Iſa. 5. 2, 4, 7.
* Gen. 3. 2?.
† Ezech. 28. 3, 4.
(*r*) 2 King. 7. 4, 6, 15. (*ſ*) Cant. 5. 11, 12, 13, 14, 15, 16. Gal. 4. 14. Eph. 6. 14, 15, 16, 17.
(*t*) Apoc. 19. 11, 12, 13. (*u*) Math. 22. 31, 32. Mal. 4. 4. (*x*) Pſal. 19. 7. Pſal. 119. 96.

and much falſe worſhip lately invented, which no man will deny, to be condemned by that word of God, which forbids, will-worſhip, prophaneſſe, and humane inventions in Gods worſhip, & that word which (y) commands us to worſhip God according to his own will and appointment, condemnes all newly invented falſe worſhip; and that Law which commands us to reverence the holy Name of God, or forbids the abuſe of the ſame by prophane, or vain ſwearing, in one kinde, forbids all other ſins of the ſame kinde, or nature: And if it be ſo in reſpect of the firſt table, much more is it to be granted, that the Law of God is ſufficient to teach all things, concerning righteouſneſſe and ſobriety, being the duties of the ſecond table, whereabouts diſtributive Juſtice is chiefly converſant, for that by one kinde of injuſtice all other injuſtice is forbidden, as is herein before declared, and might here be further inſiſted upon, if it were requiſite. (z) And it is to be conſidered that Law of man is ſo ſacred (as its called) but that upon urgent neceſſity it is to be changed. And *Solon* that wiſe Law-giver after he had publiſhed his Laws, cauſed the *Athenians* to ſwear to obſerve them (onely) for one hundred years. Laws muſt be peruſed, and ſome abroged, and others eſtabliſhed, being but humane Laws; For that there can be no ſetlement, but upon the immutable Laws of God. The *Bactrians*, *Egyptians*, *Perſians*, *Carthaginians*, *Athenians*, *Scithians* pretended their Laws to come from God. And *Mahomet* affirmes, his Law was delivered from God by *Gabriel*. *Plato*, that his Laws came from *Jupiter* and *Apollo*. *Cæl. Rhodigi*, l. 18. c. 19. p. 698.

(y) *This is agreed by* Perkins, Downam, Dod, Wolebius, *and generally all Proteſtants who have commented upon the Decalogue.*

(z) Bodin. *Republ.* lib. 4. cap. 3. p. 471.

2. The laſt thing which may be expected, as to the anſwer of the objection before mentioned, that thoſe that finde fault with the Law, do not ſhew how it ſhould be amended. I ſhall onely ſet forth what courſe hath been taken by wiſe States and Common-wealths, both in reſpect of their Judicatures, and proceedings, and humbly offer it to the wiſdom of ſuch as it concerns in this Nation, and the Dominions thereunto belonging: To judge what is right, and may be moſt agreeable to the conſtitution of the Government, and moſt conducing to the ſupport of the authority of the Civil Magiſtrate, both ſupream and ſubordinate, and to the good and happineſſe of the people, that we may lead a quiet and peaceable life, in all (a) godlineſſe and honeſty, and this is the end of all Laws and Government: Firſt therefore we will

(a) 1 Tim. 2. 2. Tit. 2. 11, 12.

will a little consider what the Jews, (who were the people of God) and in the best times of their government, when their rulers had most communion with God, and were best instructed) did in matters of Law, and Justice, in these respects: 2. And then we will consider what the *Gentiles* did by the light of nature and reason, or rather what they had gathered from the Laws of *Moses*, not so much because they were the Laws of God, as because they were the Laws of a wise Law-giver, and of a wise people, for that the wise of the Heathen Gentiles, (and the Philosophers & Poets, who were accounted their Prophets) had knowledge of *Moses*, & his writings, there is nothing more clear by many passages in their books, and the very Laws of the Heathen themselves in many particulers suit with the Judicial Laws of *Moses*. Concerning the Jews I have set it down before in this Treatise; that upon occasion of *Jethro* his wise Counsel, their (*b*) first Judges and Rulers of all sorts were instituted, and afterwards the Court of (*c*) seventy, which was the συνέδριον, or Senate of the Jews, was appointed by Almighty God: This was the great Court, or Judicatory of the Jews, and consisted of three-score and (*d*) ten persons, most eminent in their Tribes, and the President which was *Moses*; or as others say, three-score and twelve, that was six out of every Tribe (however, they were called the seventy, as were the Interpreters of the Old Testament, who translated it into Greek, bearing the name of the Septuagint, although they were seventy two.) This Counsel of the Jews heard and determined generally all controversies, according to the Laws of *God*, and if a cause were too (*e*) hard for them, by reason of the want of a particular positive Law, (*f*) as the Case of *Zelopheads* daughters, then they came unto *Moses*, (*g*) who enquired of the Lord, and received direction from him, and according to the minde of God the Case was Judged; instead whereof we have now the written word of *God* compleat: Besides this, the Jews had another Court, which dealt in Criminal and pecuniary causes, consisting of three and twenty Judges, and this Court was subordinate to the *Sanhedrim*: And thirdly, they had another Court which consisted of three Judges, which was subordinate to the other two Courts. The *Sanhedrim* sate commonly at *Jerusalem*, and was sometimes divided into five parts, and sate in five several Cities. The Court of three and twenty sate in the several Cities, and were a stand-

(*b*) Exod. 18. 21, 22.
(*c*) Numb. 11. 16, 17. *Willet Hexa.* in Exod. c. 18. ver. 21, 22. que. 19. 20, 21. Deut. 1. 15, 16, 17.
(*d*) Bodin. *de Republ.* lib. 1. pag. 57.
(*e*) Exod. 18. 22.
(*f*) Numb. 27. 1, 2, 5, 7, 8. *Godw. M. A.* l. 5. c. p. 209. *willet Hexa.* in Exod. 18. ver. 22. qu. 21, 22.
(*g*) Alfonsus *the tenth K. of Spain commanded his Judges to come unto the Prince himself as often as there was nothing written in the Laws of their own Countrey concerning the Matter in question.* Bodin. *Republ.* l. 1. c. 8. p. 108.

ing Court every (b) Citie having ſuch a Court, theſe the Jews called Councils, and of theſe our Saviour ſpeaks, when he ſaith, (i) They will deliver you up to the Councils. The third Court, or Court of three was in every Town, or Village, and dealt in ordinary, and ſmaller matters. And by this we ſee that the Jews were not forced to go far for Juſtice, but had it near them at all times, and (k) *Jeruſalem* it ſelf was not above fifty miles from the Confines of the Land of *Canaan* in the length of it, and not above twenty miles from the Confines, in the breadth thereof, and yet the Jews had not all that in poſſeſſion. And in the next place in imitation of the Jews, (l) the Grecians at *Athens* had a *Senate*, conſiſting of four, or (as ſome write) five hundred perſons, which was the great Council of the Citie and Common-wealth, and upon weighty occaſions, all theſe, or as many as would ſate in judgement. (m) There was another Court called *Ariopagus*, conſiſting of the number of three-ſcore of the wiſeſt and moſt grave Citizens, of which the Preſident, or Chief Juſtice was called *Baſileus*, that is King, and they had cognizance of matters of life and death, and Criminal cauſes, and other things of great concernment. Then they had alſo another Court, which heard and determined matters by way of (n) Compromiſe, and there was not any cauſe, if it exceeded in value ten Drachma's, which is but fifteen pence of our money, (the *Attick* Drachma being but one penny half penny,) but it paſt theſe mens hands, before it might be admitted into any Superiour Court. In like manner the *Romans*, and likewiſe the *Lacedemonians* agreed with the *Athenians* for the moſt part in reſpect of their Courts and Judicatories. The *Romans* had three Courts,† untill the third was put down by *Julius Cæſar*; and afterwards *Auguſtus*, & other Emperours appointed a privy Counſel of twenty of the chief of the *Senate*, to treat of great affairs of State in private, like the privy Council of *England*, which at firſt were but 15 Perſons, inſtituted 450 years ſince.

1.* The *Romans* in their Suits proceeded in this manner: 1. They obtained a ſumme of courſe.

2. They asked leave to enter their Plaint, or Action.

3. Then the Action was entred, if it were allowed of by the Court.

4. Which done, both parties put in pledges, either in money, or gave ſecurity, the one to proſecute the Suite, and the other to abide

(h) *The Romans had ſuch a Court in every citie.* Tac. Annal. li. 1. c. 3. p. 5.

(i) Math. 10. 17.

(k) *Mercat. Atlas. deſcript. Holy Land.* pag 819.

(l) *Rous.* Att. Ant. l. 3. c. 1. p. 108. Bodin. *Republ.* l. 3. pag. 263.

(m) *Idem.* Att. Anti. l. 3. c. 1. p. 125, 126.

(n) *Idem.* l. 3. cap. 3. Sect. 4. *Theſe were like the Jews Courts.* *Godw. M. A.* lib. 6. c. 10. pag. 294. *Willet Hexa.* in Exod. c. 18. v. 25. q. 26, 27.

† Sueton. Tranq. *in vita* Julii Cæſaris. Sect. 41.

* Bodin. *Republ.* l. 3. pag. 262. and 267. *Godw.* Ant. lib. 3. ſect. 4. cap. 20.

abide the Judgement. The third *Court* day regularly the Cauſe was heard, and Judged; if the Cauſe were *Criminal*, the *Prætor* would not ſuffer the ſame to be entred, untill the Proſecutor had ſworn, that he did not accuſe the Defendant falſly, or maliciouſly: And when any man had killed another, the Chief Juſtice, and the whole Bench of Judges, ſate upon the life and death of the Man-ſlayer. (o) And when in the time of *Flavius*, *Veſpatianus*, *Auguſtus*, the *Courts* were too full of Cauſes, that whil'ſt the old Actions hung ſtill undecided, new quarrels aroſe to increaſe them, he choſe certain Commiſſioners by Lot, to Judge between party and party, and to reduce the Cauſes to as ſmall a number as might be; ſuch a Survey might do well in the *Courts* in theſe dayes, to the end that the trivial, frivilous, and vexatious Suites, being ſpewed out (as (p) the ſurſets of all *Courts*) ſuch as were of good uſe and concernment might have time to be determined.

(q) It was a Law amongſt the *Romans*, that no *Clark*, or Notary, who was to draw, or write any other mans Will, ſhould put down any Legacy for himſelf: Alſo that impleading and deciding of controverſies; all thoſe cauſes, which aforetime were debated, before the Maſters of the Exchequer, or *Citie-Chamber* ſhould be removed into the *Common-Hall*, there to be tried, and that appeals from the Judges ſhould be made onely to the *Senate*.

(r) *Auguſtus Cæſar* uſed to ſit daily in Judgement to hear *Cauſes* in the *Tribunal*, or if he had not health, then in his own houſe.

(ſ) *Flavius Domitianus* uſed alſo to ſit in Judgement upon the *Tribunal*, and many times reverſed ſuch Judgements as were given for favour, or obtained by flattery, he warned the Judges not to give ear to perſwaſions, and Rhetorical aſſertions, and ſuch Judges as were faulty, he uſed to tax publickly, and he was ſo carefull to chaſtize the Magiſtrates, that the *Hiſtorian* ſaith, they were never more temperate and juſt in their places than in his dayes.

(t) *Romulus* left the ordinary Adminiſtration of Juſtice to the Judges, but reſerved the greateſt matters to his own Judgement.

(u) The *Romans* had a Law, that no *Senator* ſhould uſe any Trade, but thoſe were utterly forbidden the uſe of trading, for fear it ſhould breed favour, or corruption. And another Law of

The proceeding at Geneva is much like the Romans, one Court or other ſits almoſt every day, and the cauſes judged in three weeks or a moneth uſually.

Laws Geneva. p. 17, 18, 19, 20.

(o) Sueton. *Tranq. in vita* Flavii Veſpaſian. Auguſt. Sect. 10.

(p) *Lord* Bacon Eſſayes.

(q) Sueton. Tranq. *in vita* Claudii Neronis ſect. 17.

(r) Bodin. *Republ.* l. 4. c. 6. p. 500. 502.

The Hiſtorian commendeth this practiſe

Sueton. Tranq. *in vita* Auguſti. Cæſaris. ſect. 33.

Idem in vita Tiberii ſect. 31. 33.

(ſ) *Idem in vita* Flavii Domitiani. ſect. 8.

(t) Bodin. *ut ſupra.* p. 415.

(u) *Godw.* Anti. Rom. l. 3. Sect. 4. c. 6.

(x) Idem. l. 3. Sect. 4. c. 17. Ex Cicerone de Senectute.

(y) Cook. Eſſai. pag. 185.

(z) Rous Att. Ant. l. 3. c. 1. pag. 110. and pag. 111, 112.

the *Romans* was, (x) that no Advocate, or Oratour ſhould receive any gift, or reward from his *Client*, for pleading his *Cauſe*, for that they were paid by the *Common-wealth*, which was a very (y) indifferent way for all people, *Cock Eſſay*, pag. 185.

(z) The *Gracians* proceedings in their *Courts*, was like to the *Romans*, and if the Defendant did not appear upon the Summons, he was taken by default, and if he would have any eaſe againſt the Judgement, he muſt bring the *Cauſe* on to hearing againſt himſelf within ſix weeks, or elſe the firſt Judgement to ſtand. That Defendant which had not five of the Judges voyces for him was to be fined, and the Plaintiffe that made not good his charge was to pay coſts: And if the *Cauſe* were Criminal, before the Suit was allowed to proceed the Proſecutor took his Oath that his accuſation ſhould be juſt.

Cook *Engliſh Law* p. 103.

(a) Lechfords New. pa. 26. *In the great Court at new England, held twice in the year like our Aſſizes, the Matters of the Charge to be inquired of, are reduced by the Governour, who gives the Charge under the Heads of the Decalogue.*

(b) *Grotius* Pol. Max. par. 1. c. 4. p. 31. 32.

(c) Bodin. *Republ.* l. 1. pag. 104. *accounts this a thing moſt abſurd.*

To conclude, good Laws are more ſecuritie to the people, than good Magiſtrates, our Laws have ſufficient in them to bring in the whole body of Popery, (except the Popes ſupremacy) and to deſtroy all the faithfull people of the Land, and therefore it's to be wiſhed that the Laws were (a) made agreeable to the Laws of God, and then if the proceeding and execution of them, were either like the *Jews*, the *Gracians*, or the *Romans*, and that all ordinary matters might be decited and determined in the proper *Counties*, it would be found I doubt not, a great bleſſing and happineſſe to the people.

And I cannot imagine what can be ſaid againſt this, but that which is called reaſon of State (the very namewhereof an honeſt Pope abhorred) This, (b) as one ſaith, was anciently the ſame with Equitie, but as now its uſed in the world, is nothing elſe but a device, that carries the face of equitie, ſuppoſing it Lawfull, not onely to tranſgeſſe the Laws of men, (c) but even the Laws of God for Politicke ends? And ſince *Machiavel* plaid *Achitophel*, this for ſhame is called reaſon of good government.

1. This policie will tell us, that thee hange of the Laws & the practice thereof, will diſhonour and demoliſh the moſt famous Univerſitie in all the world (for our kinde of learning) the Inns of *Court* and of *Chancery*.

2. It

The three Temples belonged to the Templars, until Ed. 2. *his time, and thence to the Hoſpitallers untill the deſolution in the time of* H. 8.

2. It will Eclipſe the glory of *Weſtminſter*; and a great part of *London*, whoſe inhabitants live by lodging and victualling.

3. That tediouſneſſe of Law-ſuits, and the great expences thereof, are to be tolerated as a neceſſary evil, or puniſhment, which ſerves to keep men quiet, and deterre them from many unneceſſary Snites, which otherwiſe would be commenced, but that they fear the remedie may be worſe than the diſeaſe.

4. That the Law is a (*d*) neceſſary evill to keep men from contriving and practiſing worſe miſchief in the Common-wealth, which they have no leaſure to do, whil'ſt they are wrangling and jangling about Law-ſuits.

(d) *Tyrants uſe to imploy their Tributaries, in wars abroad, or idle and needleſſe Trophies, that they might want leaſure to think of other things.* Jun. Brut. Vind. Contr. Tyran. p. 108.

5. That expence on Law-ſuits is a good means to keep ſuch men (who are of reſtleſſe and unquiet ſpirits) poor in the Common-wealth, whereby they are diſabled to make head againſt the Government: Theſe, and ſuch like props for upholding this frame of building, appear upon the firſt view to be too weak and unſound to prop up the ſame, being herein already anſwered, and are all overthrown by that rule of Scripture, (*e*) We muſt not do evil (no, not the leaſt) that good may come thereof.

upon the ground ſtage-playes and Stewes are ſuffered in ſome Countreys.

(e) Rom. 3 8.

Now ſeeing it hath pleaſed the Lord, our God, to bring us not onely out of that iron furnance, and darkneſſe of *Egypt*, the hard ſervice and ignorance of Popery, but alſo to give an end to our wilderneſſe, miſeries, and to ſettle us in peace, after all our wars and diſtempers, and ſo to put us into a condition (as the *Iſraelites*) to receive good and wholſom Lawes; let us learn Gods end in this, and know for our inſtruction what is recorded by the Holy Ghoſt, *Pſal.* 105. v. 43. 44. 45. hee brought forth his people with joy, and his choſen with gladneſſe, *&c.* And gave them the Lands of the Heathen, and they inherited the labour of the people, that they might obſerve his Statutes, and keep his Laws.

A Post-Script.

Containing ſundry Poſitions, founded upon the holy Scriptures, ſerving for principal grounds of Laws amongſt Chriſtians.

1 FIrſt, *that the holy Scriptures are of Divine Authority, the rule of life and good manners*, Iſa.8.20. Gal.6.16.Eccleſ. 12.10. Luke 16.29,31. 2 Tim.3.16,17.

2 *That Chriſtian religion reformed, contained in the holy Scriptures, is to be held forth as the general, and publick profeſſion of the Nation*, Math.10.32. Luke 12.8. Rom.10.9,10.

3 *The holy Scriptures are to be publickly, and conſtantly read in the Congregations*, Act. 13.15. and 15.21. Deut.31.11, 12. Neh. 8.18.

4 *The worſhipers of idols, or falſe Gods, and ſuch as draw others to idolatry, are not to be tolerated, but to be puniſhed ſeverely*, Exod.22.20.Deut.13,5.8,9,15.Job 31.26.27,28.Exo.32.27,28.

5 *Blaſphemous curſing, and ſpeaking reproachfully againſt God, is to be puniſhed with death, but not every errour, or reputed Heretical opinion, or which is accounted blaſphemy*, Lev.24.11.14.15.16. 1 Sam.17.43,45. Job 2.9. Dan.3.29.

6 *The conſcience of the weak is to be perſwaded, not to be enforced contrary to the light thereof, eſpecially in caſe of things indifferent*, Rom.14.3.13,23. Act.15.24,28. Gal 5.1.

7 *That the publick worſhip of God is to be commanded, and provided for by the Supream Civil Magiſtrate*, 2 Chron, 14.3,4. and 30.6. and 31.2. 1 Kings 8.1.5,15.

8 *The Supream Magiſtrate (if not known by evident Demonſtration, that he is deſigned of God to Government by conqueſt, or ſpecial deliverance wrought by him) is to be choſen by the people*, 2 Sam.5.1,3. 1 Chr.11.1,3. Pſal.78.70. Deut.17.14,15.

9 *That there ought to be Government of ſeveral ſorts and degrees, ſubordinate from the Monarch, or Chief Magiſtrate, unto the number of ten in every Village, and theſe to be appointed by the Supream Magiſtrate*, Exod.18.21,22. Numb. 11.16,17. Rom.13.4.

10. *That*

10 *That all matters of controversie wherein one man wrongs another are to be judged by the Civil power in the hands of Magistrates and Judges*, 1 Sam.2.25. Exod.18.21,22. 1 Peter.2.13,14.

11 *That the Supream Magistrate is Judge of all great and weighty Causes, and the word of God ought to be his rule*, Exo.18. 22,26. Num.27.5,8. Deutr.1.17. Lev.24.11.

12 *Many thing are to be Judged according to the discretion of the Judges with reference to the Law of God, and such Judgments not to be accounted Arbitrary, much lesse to savour of tyrannical Government*, Exod.21.22, 30, 35. Numb.27.8. 1 Kings 2.44. and 3.16 25,27.

13 *No man ought to be a Judge or Magistrate, but he that hath abilities of nature & grace, that feareth God and hateth covetousnesse, ordinary Jurors not to be allowed as competent Judges of matters of fact for want of qualifications*, Exo.18 22,26. Numb.11.16. 17. and 27,18,20. Acts 13,22. 2 Sam.23.3.

14 *Magistracy is to be reverenced and the contempt thereof punished according to the offence*, Exo.22.28. Acts 23.5. 2 Sam. 16.5,6,7. 1 Kings 2.44.

15 *The power and Authoritie of the Supream Magistrate is to be upheld and maintained, and the Common-wealth defended, by the Estates and strength of the people*, Mark.12.17. Math.17.27. Rom.13.6,7.

16 *Disobedient Children sons of Belial, without Yoke, given up to drunkennesse, and excesse of Riot, such as curse, strike, and abuse their parents, are to be severely punished, and being found incorrigiable are to suffer death*, Deut.21.20,21. Exod.21.15,17. Math.15.4.

17 *Every man ought to rule in his own house, the Magistrate upon complaint to rectifie abuses therein*, Deutr.21.19,20. Hester. 1.20,22. 1 Tim.3.4. Exod.20.10.

18 *He that wilfully killeth any person (although in hot blood, and upon some petty provocation) ought to suffer death*, Exod.21.12. Rev.13.10. Lev.24.17,21,22.

19 *He that hurteth or striketh another, is to be punished according to the hurt, to pay for the cure, and recompence the party hurt for his damage and losse of his time, and if the hurt were done malitiously and presumptuously, he is to pay eye for eye, tooth for tooth*, 21. Exod.18.19. Levit.24.19,20. Deutr.19.21.

20. *Such as make uproares in the Common-wealth where death follows, or is occasioned by such uproares, are to suffer death,* Luke 23 19. 2 Chr. 23. 14. 15. 2 Sam. 20. 21. 22.

21. [a] *All Adulterers,* [a] *Buggerers,* [a] *Witches,* [b] *Sodomites,* [b] *Ravishers, and professed, or common* [a] *Whores, are to be put to death, and so are all such as commit* [a] *Incest in the nearest degrees, truly so called,* [a] John 8. 5. Levit. 20. 10. Jer. 29. 22. 23. [a] Exod. 22. 19. Levit. 20. 15. 16. [a] Exod. 22. 18. Levit. 20. 6. [b] Levit. 20, 13. and Lev. 18. 22. [b] Deut. 22. 25. 2 Sam. 13. 14. 29. [a] Gen. 38. 15. 24. [b] Levit. 20. 11. 12. *and* 18. 6. 7.

22. *Fornicators are to be punished severely, and to make satisfaction to the parties wronged by such uncleanesse,* Exod. 22. 16. 17. Deut. 22. 28. 29. Jude 7.

23. *All wantonnesse, lasciviousnesse, and filthy acts of uncleannesse, are to be severely punished by the Civil Magistrate,* Prov. 6. 29. Jude 7. Deut. 25. 11. 12.

24. *That for felonies of Goods, or Cattle stollen, the Thief not to suffer death, but to make restitution, according to Gods Law, as the case shall be, and be bounden to serve in case he cannot satisfie,* Prov. 6. 30. 31. Exo. 22 1. 7. 4 7. Job 20. 15. 18. 2 Sam. 12. 6. Luk. 19. 8.

25. *That for publick, and presumptuous theft, to the great prejudice of the Common-wealth, or where murder followeth, the Thief shall suffer death,* Josh. 7. 11. 25. 2 Sam. 12. 5. Exod. 22. 2.

26. *That no man to be convicted in any case Capital, but by the Testimony of two witnesses at least,* Deut. 17. 6. 2 Cor. 13. 1. Heb. 10. 28. Numb. 35. 30.

27. *That a single witnesse shall convict no man, in any case without other proof, or evincing circumstances,* Deut. 19. 15. 18. John 8. 17. and 5. 31. Math. 18. 16. 1 Cor. 13. 1.

28. *That a perjured, or malitious false witnesse, shall suffer the same punishment, or losse, which his false Testimony regularly should cause another to suffer, and the suborner, of Perjury in like manner,* Dan. 6. 24. Deut. 19. 18. 19. 21. Prov. 19. 5.

29 *That for all trespasses by ones self, or any other by his appointment, the wrong-doer shall make satisfaction, both for damages losses,* Gen. 31. 39. Deut. 22. 19. Exod. 21. 28. Exo. 22. 5. 6. 9.

30. *That for all losses by breach of covenant, or promise, satisfaction to be made by the wrong-doer, both damages and losses,* Gen. 31. 39. 28. Exod. 22. 10. 12. Levit. 19. 13.

31. *Where*

31. *Where a man is over-wrought and deceived, in any contract, or covenant, the deceived is to be relieved, and not to be bound by such agreement,* 1 Thes. 4.6. Levit. 19.13. Isa.1.17. and 58.6.

32. *That where a man at liberty, and of aged discretion, swears to perform any lawfull contract, or agreement, he is to be enforced to perform it, although he were deceived,* 1 Kings 2.42.44.46. Josh.9. 14.15.18. Psal.15.4. Eccles.8.2. Heb.6.16.

33. *Such as curse, or abuse the Chief Magistrate, or Judges are to be severely punished,* Exo.22.28. 1 Kings 2.44.46. 2 Sam.16.5. 6.7. Acts 23.5.

34. *That tale-bearers contentious persons, and breakers of the publick peace, are to be suppressed,* 1 Tim.2.2.3. Cant.2.15. Prov. 26.20. Hab.1.3. Levit.19 16.

35. *That no man is to be his own Judge, or Avenger, and therefore all such as enter forcibly, or take mens possessions from them without their consent, to be punished, and the oppressed relieved,* 1 Kings 21.19. Mich.2.2. Rom.12.19.

36. *That excesse of riot in feasting and drunkennesse, ought to be punished and restrained,* Hos.7.5. 1 Tim.1.9. Dan.5.1.5.30. 1 Sam.25.36.37. Isai 22.13.14.

37. *All Estates of inheritance, are to be Estates in Fee-simple, and no Intails upon the Heirs Males,* Numb.27.7.8. 1 Tim.5.8. Gen.23.11.17.20.

38. *All Estates with the Owners Pedegree, are to be Inrolled in some convenient known place, for avoiding strife and contention,* Jer. 32.11.12. Josh.14.14.15. Josh.15.89.19.20. Ezra 2.62.

39. *All mens Estates to be disposed of, according to their Wills, whether by writing, or word of mouth,* Gal.3.15. Gen.48.22. Gen. 49.29. and 50.13. Heb.9.16.17.

40. *The eldest Son not being guilty of any Notorious offence, ought to have a double portion,* Deut.21.17. 1 Kings 2.15. Gen. 25.33. and 48.22.

41. *All younger children to have parts of their Parents Estates, according to their deserts, and as the Estate will bear,* Gen.25.6. Luke 15.12. Josh.14.15. and 16.17.

42. *The Preachers of the Gospel are to have liberal maintenance, that they may not be encumbred with the world,* 1 Cor.9.7.8. 9.11.12.14. Gal.6.8. Luke 10.7. 1 Tim.5.17.18.

43 *Schooles of learning are to be maintained, and godly learned men to be countenanced and encouraged*, Acts 19.9. 1 Kings 18.4. 1 Sam.19.20.

44 *Lunaticks, Mad-men, Idiots, and Infants, are to be cared for by their friends and overseen by the Magistrates, and the Estates of unthrifts to be managed, and preserved by others for their Wives and Children*, Isa.49.23. Psal.78.71,72. 1 Tim.5.8.

45 *That such as runn in Debt, shall have their estates sold, to pay their Debts, he that hath nothing to pay, not to be imprisoned for Debt*, 2 Kings 4.7. Exo.22.26,27. Luke 6.35. and 7.42. Math.18. 25,27,33,34.

46 *Every man is to be enforced brought to be up & to live in some Lawfull calling, and he that refuseth to labour, not having other sufficient maintenance, to be kept to work in some work-house like* Bridewell, Jonah 1.8. 2 Thes.3.10,11. Gen.3.17. 1 Cor.7.20.

47 *That all mens Demands and Complaints, concerning Estates, Debts, Duties, or Trespasses, shall be made in plain Terms, as the truth of the Case is*, Neh 5.2,3,4,6,12. Numb.27. 1,2,3,4,8,9. Acts 24 5,11,12,13. Josh.7.19.

48 *That the Defendants answer be plain and true, without nicety of pleading, or obscuring the truth*, Acts 26. 4, 5, 6, 7. Acts 7. *the whole Chapter*, Joshua 7. 19, 20, 21.

49 *That all differences, and Demands be heard in the prehence of the parties accusing, and accused, ad Judgement given before their faces, if the parties be able to appear, unlesse they wilfully refuse*, Acts 23.35. & 24.8. & 25.16. 1 Kings 21.10. 1 Kings 3.17. 22.27.

50 *That no Counsel be retained for any Suters, but that the Pleaders be rewarded by the State, and be sworn as assistants to the Judges, as indifferent men to endeavour to finde out the truth, and not to obscure, or overthrow it*, Exo.23.2 Lam.3.35,36. Judges 19. 30 *and* Judges 20.7,8. Numb 22.7,17. 2 Pet.2.15. Acts 24.5.

51 *That no man be admitted to be a Judge, or Justice, who takes any Fees, or useth any Trade, or dealing, whereby he may be engaged to any party*, Exo.23.8. Pro.29.4. & 15.27. Isa.1.23. Deut.16.19.

52 *That in taking of Oaths, the holy name of God be invocated, with lifting up of the hand without kissing the book*, Genes. 14. 22. Rev.10.6. Jer.4.2.

53 *That the matter of Clergie be exploded, and instead thereof Judgement be given according to the merits of the Cause, with reference to the Law of God*, Exo.23.3,6,7. Mich.6.8. Deut.1.17.

54 *That*

54 *That the circumstances and equity of every Cause be weighed, together with the Justice, and matter of fact, and Judgement to be given accordingly,* Isa.59.13,14,15. 2 Sam.8.15. Josh.7.11,25.

55 *That the poor be cared and provided for, according to their necessities, and such as want houses, to be suffered to dwell by their rich Neighbours, if they be able to provide for themselves, or otherwise to be provided for by the inhabitants where they live,* Amos 8. 4,6. Isa.5.8. Psal.41.1,2. Levit.25.35.

56 *That there be a Clark, or Officer, who may constantly attend at every Market and Fair, to see that there be no deceit in weights, measures, or other deceits in Trading, or Manufactures,* Pro.20. 10. Deut.25.13,14. Amos 8.5,7. Isa.1.17.

57 *That the Oaths of two, or more witnesses may be a sufficient conviction in Law, without any Indictment,* Deut. 17. 6. and 19. 15. Math.18.16. 2 Cor.13.1.

58 *That no by-Laws, or Orders be made, or suffered in the Common-wealth, to the oppression of the younger, or poorer sort of Tradesmen and others as is usually done in every Corporation.* Amos 4.1,2. Isa.10.1,2,3. Zeph.3.13.

59 *That all Suits and controversies, although popular, or Criminal, be determined, upon hearing witnesses sworn, and giving evidence on both parts as well as for the party accused, as the Common-wealth, and in cases where there are no witnesses, that the accused's own voluntary Oath be taken for his discharge,* Exod.22.9,10,11: 1 Kings 8.31. Job 29.16. Acts 26.5. Isa.43.9,10.

60 *That there be Judicatories, and Courts established in every Citie and County, where the Judges may sit constantly in open places to hear, and determine all controversies,* Exod. 18.13,25,26. Deut. 21.19. Prov.31.23. and 25.7. Ruth.4.1,2,9.

61 *That before any Cause be entred in any Court, or come before the Judges, peace be offered by the Plaintiff, and that wise-men be appointed to take up controversies,* 1 Cor.6.5,6. Math.5.25. Deut.20. 10. Psal.34.15.

62 *That he that misprints the holy Scriptures, or bindes them up false, be punished according to the greatnesse of the offence, especially where the Text, or translation is falsified, or corrupted,* Exo.39.43. Gal.3.15. Deut.4.2. Rev.22.18,19.

63 *That such as swear by Idols, or Creatures, or prophanely swear, or un-reverently use the holy Name, attributes, or word of God, be severely punished,* Math. 5. 34. 35. Jer. 4. 2. and 5. 7. Exod. 20. 7. Amos 8. 14.

64 *That*

64 *That ſuch as uſe Lots lighely, or prophanely in ſporting, or gaming be puniſhed, and alſo ſuch as game for money, or money worth be prohibited and reſtrained,* Prov. 16.33. Levit. 16.9.

65 *That Bull-baiting, Bear-baiting, Cock-fighting, and Horſ-races, and all other abuſes, and cruelty towards the Creatures be prohibited under a ſevere penalty,* Prov. 12.10. Deut. 14.21. Exod. 23.19.

66 *That Men-ſtealers be puniſhed by loſſe of life, and as the greateſt Felons in the World* Exod. 21.16. Deut. 24.7. 1 Cor. 6.6.

67 *That Marriage of children without Parents conſent be diſanulled, and Marriages with Infidels prohibited,* Ezra 9.14. Gen. 27.46. Mal. 2.11. Heſt. 1.22 Numb. 30.5.

68 *That ſtrange faſhions, and Whoriſh attire be prohibited by Law, and all perſons ordered to wear Apparel fit for their degrees, and callings,* Zeph. 1.8. Iſa. 3.18. 19. Prov. 7.10. Gal. 5.9. Deut. 7.3.

69 *That the matter of divorce be ſetled in the Magiſtrate, onely in caſe of Adultery, that Marriage likewiſe be ſolemnized in the preſence of ſome publick Magiſtrate in an open place after due publication,* Ruth. 4.9. Math. 19.9. Mark 10.12. Luke 16.18.

70 *That unlawfull Magick, and the Rudiments thereof, Judicial Aſtrologie, and all other ſuch wicked Arts, be prohibited under ſevere puniſhments,* Deut. 13.1.3. and 18.10.11. Ezech. 21.21.22. 23. Dan. 2.2. Jer. 10.2.

71 *That Heirs may be bound to pay the Debts of their Anceſtors after the Lands which deſcended be ſold, as well as before. ſo far as the Land extends, and that an Action of Accompt, or Debt upon contract may lie againſt an Executor, or Adminiſtrator for the Debt, or duty of the Teſtator, ſo far as he hath aſſets,* 2 Kings 4 7. Prov. 22.26.27. Rom. 13.8.

72 *That the Proceſſe in all Caſes of Suite, be onely a Summons, which being duely ſerved, if the Defendant refuſe to appear, or ſhew not ſufficient cauſe to the contrary, the Plaintiffe may proceed to his proof, and ſo to hearing, or trial, as if the Defendant had appeared,* Numb. 16.11.14.28.32. Deut. 25.8. Heſt. 2.10.11.19.21.

73 *That no man have final Judgement againſt him by default without proof in any Caſe, be it never ſo ſmall, unleſſe the party accuſed do at the time of the Judgement openly confeſſe the fact,* Numb. 35.30. Deut. 17.6. 1 Kings 8.31.

74 *That*

74 *That common lyars and Inventers of false news & slaunders may be punished as disturbers of the peace,* Psal. 101.7. Prov. 26.20 Levit 19 16

75 *That the Superstitious and Paganish names of the moneths and dayes, be changed, and called by the names of first, second, and third,* &c. *according to the Scriptures,* Levit. 20, 23. Exod. 12. 2. Deut. 12 3. 4 Genes 7.11. Genes. 1 5. Ezech. 32.1. Psal. 16.4. Exod. 23. 13.

76 *That the body of the Law may be collected into a volume, that it may be known to the Supream Magistrate, and to the Judges, and the people,* 1 Sam. 10.25. Deut. 17.18.19. Exod. 20. *from verse* 3. *to the* 9. *verse of* Chap. 23. *Hester* 1.19.

77 *That all the Tythes, and Gleab Lands, with other things, called Church dues, may be sold, and that a more fit and lawfull maintenance be provided for the Ministers of the Gospel,* Hebr. 7. 9. 12. 1 Cor 9.7.8 9 12.14. Gal 6 8.

78 *That no Monarch, or Supream Magistrate, may usurp that Impious priviledge, to pardon murder, if ever any such pardon should be granted in any age hereafter, the same may be declared void,* Numb. 35.31. Levit. 24.17. Exod. 21.12. Jam. 4 12. Prov. 28. 17.

79. *That some course may be taken by a Law, for ballasting the Trade of the Common-wealth, and for relief of the Inland Cities and Towns, of the Nation,* 2 Cor. 8. 13. 14. 15. Exo 16 18 Josh. 13. 32.

80 *That Godly learned men may be incouraged to labour the conversion of the Iews, and to that end, to learne the* Portugal's *and* Italian *tongues, that they may be able to preach to them, for that in most part of the World they understand those Languages,* Rom. 11. 25, 26. Isa. 43. 6. and 59. 20 and 60. *whole Chap.* Rev.

81 *That interest of money be not suffered to run, or be exacted upon poor people, which borrow for their necessitie, for food and cloathing, or grow poor by the hand of God,* Neh 5. 10. 11. 12. Exod. 22 25, 26, 27. Levit. 25. 35, 36.

82 *That all Laws which upon examination shalbe found repugnant to the Laws of God, or oppressive to the people may be repealed,* Mich. 6. 16. Psal. 94. 20. Isa. 10. 1, 2, 3.

83 *That Guards of Souldiers and Armes, are necessary, and to be used for safety of the Common-wealth, and of the Princes person,* 1 King. 1. 38. 2 Sam. 23. 8. *to the end* 2 Sam. 20. 23. 2 Kings. 11. 8. 2 Chro. 23. 7, 10.

FINIS.

Errata.

IN the Epiſtle, pag. 2. lin. 5. add *he* before *little*. lin. 13. for *of*, read *and*. pag. 13. and pag. 16. in the Margents, for *Cok.* read *Cock.* pag. 49. lin. 19. for *chuſe*, read *cheat*. and lin. 20. for *uſe*, read *truſt*. pag. 56. lin. laſt ſave one, for *deductions*, read *dedications*. pag. 61. lin. 14. for *habentes*, read *habentis*. pag. 63. lin. 21. add *help*. pag. 87. lin. 2. for *fined*, read *feigned*. pag. 106. lin. 2. for *maney*, read *money*. and lin. 6. add *it*. pag. 108. no. 3. add *been*. and for *ſtarted*, read *ſterved*. pag. 109. lin. 1. for *excrementious*, read *excrementitious*. pag. 114. lin. 4. add *on*. lin. 6. put out *ſome*. pag. 116. lin. 18. for *were*, read *was*. pag. 117. lin. 8. add *of*. pag. 123. lin. laſt, for *Judges*, read *Indies*. pag. 121. lin. 12. for *Balington*, read *Babington*. pag. 128. num. 23. for *ſeeing*, read *ſeeming*. pag. 131. num. 29. lin 9. add *but*. pag. 132. lin. 1. add *puniſhed*. pag. 133. for *in eſtate*, read *inteſtate*. *ead*. lin. 8. add *nor*. *ead*. num. 35. lin. 6. for *ſome*, read *come*. pag. 135. num. 39. lin. 10. for *purely coloured*, read *party coloured*. pag. 139. num. 40. lin 8. for *counſels*, read *Conſuls*. pag. 140. lin. 14. for *City*, read *Cities*. pag 145. lin. 3. add *I*. pag. 146. lin. 16. add *nor*. pag. 148. num 1. for *Summe*, read *Summons*. Scripture-Groun. num. 46. *to be*, to be read before *brought up*.